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UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA
 SAN FRANCISCO DIVISION

SYNOPSYS, INC.,

Plaintiff,

vs.

RICOH COMPANY, LTD.,

Defendant.

) Case No. C03-02289 MJJ

)

) **JOINT CASE MANAGEMENT**
) **CONFERENCE STATEMENT AND**
) **PROPOSED ORDER**

)

) Date: October 28, 2003

) Time: 2:00 p.m.

) Courtroom: 11

)

)

Pursuant to FRCP 26(f) and L.R. 16-9, Plaintiff Synopsys, Inc. (“Synopsys”) and Defendant Ricoh Company, Ltd. (“Ricoh”), jointly submit this Joint Case Management Conference Statement and Proposed Order.

DESCRIPTION OF THE CASE

1. A brief description of the events underlying the action:

a. Synopsys’ Position

(1) Synopsys’ comment on Ricoh’s description of the case

Synopsys objects to Ricoh’s misuse of this case management conference statement. Under the Federal Rules of Civil Procedure and the Local Rules of this Court, the parties are required to provide a “brief description” of the case. Instead of presenting a “brief” description of *this declaratory judgment* case, Ricoh is attempting to use this statement as a platform to discuss at length (six pages!) the substance and issues of the Delaware action that is not yet docketed in the Northern District of California, much less consolidated with this action and before this Court. In addition, as noted below, Synopsys intends to move to stay the Delaware action once it is docketed in the Northern District, which would render virtually all of the issues that Ricoh identifies below moot. Ricoh’s description of this case is largely inappropriate and entirely premature.

Synopsys will respond to Ricoh’s numerous misstatements of fact and law at the proper time – when the Delaware action is docketed in the Northern District and a case management conference is held regarding *that* case. See L.R. 16-2(c).

(2) Synopsys’ Description

The present action is an action by Plaintiff Synopsys seeking a declaratory judgment that U.S. Patent Nos. 4,977,432 (“the ‘432 patent”) and 5,197,016 (“the ‘016 patent”) are invalid and not infringed by Synopsys’ Design Compiler software. Synopsys brought the present declaratory judgment action against Ricoh to protect itself and its customers from Ricoh’s threats of patent infringement suits based on these patents.

Prior to Synopsys’ filing of the instant declaratory judgment action, Defendant Ricoh had filed an infringement suit against six of Synopsys’ Design Compiler customers alleging infringement of method claims 13-20 of the ‘432 patent in the District of Delaware. Importantly, even though Ricoh

1 was accusing Synopsys' customers of infringing the '432 patent based on their ordinary use of Design
2 Compiler, Ricoh did not name Synopsys as a defendant in, and Synopsys was therefore not a party to,
3 the Delaware action.¹ Ricoh also threatened other Synopsys customers with patent infringement suits
4 for their use of Synopsys' Design Compiler software based on both the '432 patent and the related
5 '016 patent.

6 About six weeks ago, the Delaware court found that Ricoh's infringement action against
7 Synopsys' customers was essentially one between Ricoh and Synopsys that would best be litigated in
8 the present declaratory judgment action. Significantly, the Delaware court found that this "court's
9 determination regarding infringement and validity of the '432 patent will efficiently dispose of the
10 infringement issues regarding Synopsys' customers" in the Delaware action. Based on these
11 conclusions, the Delaware court decided to transfer Ricoh's infringement action to this district.

12 Based on these same conclusions, Synopsys will be filing a motion seeking an order from this
13 Court staying Ricoh's transferred patent infringement suit against its customers pending the outcome
14 of the present declaratory judgment action. Synopsys' positions in this case management conference
15 statement and the proposed case schedule it includes assume that the Court stays the transferred
16 Delaware action against Synopsys' customers after it is docketed and consolidated with this matter,
17 and that the only issues necessarily adjudicated at this time in this action are those related to Synopsys'
18 declaratory judgment action.

19 **b. Ricoh's Description**

20 The Court is already acquainted with the events underlying this action, as set forth in this
21 Court's order of September 22, 2003. Ricoh vigorously disputes Synopsys' continuing effort to
22 preclude Ricoh from pressing its patent infringement claims against the parties who are actually
23 infringing the '432 patent – the Delaware defendants. The now-transferred Delaware action should be
24 consolidated with Synopsys' declaratory judgment action, and the two cases proceed simultaneously
25

26
27 ¹ This fact is important since Ricoh continually attempts to unite the Delaware defendants and
28 Synopsys, and thereby impose obligations from the Delaware action on Synopsys, even though
Synopsys was not a party to that action.

1 through discovery, claim construction and trial. Absent such a process, then Ricoh will be denied its
2 ability to obtain relief from the actual infringing parties or compelled to try its case twice.

3 There are several issues to be resolved, including (1) whether the Delaware action should be
4 consolidated with this action; (2) whether Ricoh should be considered as if it was the plaintiff, since it
5 is the patent owner and initiated the earlier-filed action against the actual infringers; (3) whether the
6 refusal by Synopsys and the Delaware defendants to meaningfully participate in discovery can be
7 resolved, or whether their stonewalling will continue in this case; (4) whether Synopsys will be able to
8 circumvent the court-ordered investigation for possible fraud on the Delaware court; and (5) whether
9 Synopsys' claim with respect to the '016 patent should be dismissed, since that patent was not
10 discussed in the September 22 opinion and Ricoh has not sued or threatened to sue any entity on that
11 patent. We discuss each of these issues in turn after outlining the status of the actions. Because the
12 local rules did not contemplate this submission being made while a transferred case was being
13 processed, a more complete description of the background is appropriate.

14
15 **The Delaware Action.** In January 2003, Ricoh sued several designers and manufacturers of
16 computer chips in the District of Delaware (C.A. No. 03-103-GMS) for patent infringement, alleging
17 that those defendants were using the steps recited in the process claims of Ricoh's '432 patent. The
18 '432 patent describes a highly advanced technical process used in designing and manufacturing certain
19 types of computer chips. In carrying out their infringement of the patented process, the Delaware
20 defendants use software supplied by the plaintiff in the instant action, Synopsys, and perhaps other
21 suppliers.

22
23 Although Synopsys chose not to try to intervene in the Delaware case, its attorneys assumed
24 control of the defense and have filed multiple declaratory judgment counterclaims against Ricoh.
25 Synopsys' attorneys unsuccessfully argued that the Delaware court should stay discovery in that action
26 pending the outcome of the action in California. Synopsys' attorneys have filed all papers on behalf of
27 each of Delaware defendants; have attended the Rule 16 conference, negotiated a protective order; and
28 have taken and responded to discovery. The Delaware court entered a pretrial order governing

1 discovery, a copy of which is attached hereto as Exhibit 1. On August 29, 2003, the Delaware court
2 granted the Delaware defendants' motion to transfer that action to this Court. Even though the file was
3 sent to this Court on September 8, 2003 and was received by this Court on September 12, 2003, a
4 docket number was not assigned until October 16, 2003. The case was randomly assigned to Judge
5 Trumbull; the new case number is C-03-4669 PVT. Pursuant to Local Rule 3-12, Ricoh filed a notice
6 of related case on October 20, 2003.

7
8 During the transfer process of the Delaware case, the parties in the Delaware action have
9 continued to be governed by the pretrial schedule established by the Delaware court (and attached as
10 Exhibit 1). The parties have exchanged documents, scheduled depositions and engaged in third party
11 discovery. Ricoh submits that the Delaware pretrial schedule should be incorporated into this Court's
12 schedule.

13 **The Declaratory Judgment Action.** After months of litigating the Delaware case, Synopsys
14 filed the instant declaratory judgment action with respect to the '432 patent and another patent (the
15 '016 patent) that Ricoh did not assert in the Delaware case. Ricoh has never accused Synopsys itself
16 of infringing the '432 patent or the '016 patent and has stated that it will not bring any action for
17 infringement of the '432 patent or the '016 patent against Synopsys with respect to Synopsys' past or
18 current software products. Ricoh has advised others of the availability of a license under the '016
19 patent but has not threatened anyone with infringement of that patent. On September 22, 2003, this
20 Court denied Ricoh's motion to dismiss Synopsys' declaratory judgment action. There remains an
21 open issue with respect to the unasserted '016 patent, as the September 22 decision focused solely
22 upon the '432 patent.

23
24 Following are the most pressing open issues:

25 **Issue No. 1: Whether the Delaware Action should be consolidated with this action.** The
26 parties agree that the Delaware action should be consolidated before this Court. Synopsys' counsel,
27 acting on behalf of the Delaware defendants, sought a stay of the Delaware action, arguing that the
28 declaratory judgment action should resolve all issues. The Delaware court rejected that argument and

1 instead transferred that action to this Court. Synopsys' counsel has announced its intention to renew
2 its motion. Ricoh will vigorously oppose any such motion. Indeed, Ricoh submits that it would be
3 more efficient for this Court to instruct the parties at the Case Management Conference that the two
4 actions will be consolidated and to establish a common pretrial and trial schedule. Ricoh's positions
5 and proposed case schedule are set forth in this case management conference statement assume that the
6 Court will consolidate the transferred Delaware action against Synopsys' customers after it is docketed
7 with this matter.

8 The two cases should be consolidated and tried together for four reasons.

9 First, Synopsys' counsel already tried but failed to have the Delaware action stayed. Discovery
10 in the Delaware action is advanced, and is readily applicable to Synopsys' declaratory judgment action.
11

12 Second, Ricoh's claims are against the direct infringers – the corporations who actually are
13 practicing the process disclosed in the '432 patent. Ricoh's damage calculations will be based upon
14 the design, manufacture and sale of ASIC chips by those defendants, the actual, direct infringers, and
15 not any sales of Design Compiler by Synopsys. Ricoh's right to an injunction is against the Delaware
16 defendants. Although Synopsys has a limited indemnification obligation to its customers, that
17 contractual relationship can not and should not prevent Ricoh from recovering infringement damages
18 from the direct infringers.

19 Third, eliminating the only parties (the actual infringers) that Ricoh has sued for patent
20 infringement would turn this action into a purely advisory opinion case. It would deny Ricoh with its
21 ability to enforce its '432 patent and deny it with an ability to obtain an injunction during the life of the
22 patent since the action against the Delaware defendants will be delayed for several years.
23

24 Fourth, consolidation promotes judicial economy. Synopsys and each of the Delaware
25 defendants have asserted declaratory judgment claims (or counterclaims) against Ricoh, and are not
26 represented by different attorneys (which could give rise to complications). Ricoh has asserted direct
27 infringement claims under the '432 patent against the Delaware defendants. All of these claims (and
28 counterclaims) are inextricably intertwined, and should be resolved together.

1 It further should be noted that a stay of the Delaware action would permit Synopsys to avoid
2 rulings by the Delaware court (see Issue 3 below) and an inquiry into a possible fraud on the court (see
3 Issue 4 below).

4 **Issue No. 2: Whether Ricoh should be the plaintiff, since it is the patent owner and**
5 **initiated the earlier-filed action.** Synopsys would have this Court ignore the fact that Ricoh is the
6 owner of the patent and has the earlier-filed action. Consolidating the two cases and treating Ricoh as
7 the plaintiff is consistent with the case law and makes intrinsic sense. Otherwise, trial will be a
8 disjointed and an unusually prolonged affair.

9 **Issue No. 3: Whether the refusal by Synopsys and the Delaware defendants to**
10 **meaningfully participate in discovery can be resolved, or whether their stonewalling will**
11 **continue in this case.** There are a number of open discovery issues in the transferred case because the
12 Delaware defendants and Synopsys generally have refused to respond to Ricoh's discovery requests.
13 For example:

14 ?? The Delaware defendants have refused to produce the documents they listed in their
15 initial disclosure, contending that the documents they listed are now "irrelevant." At a
16 hearing on August 28, 2003, Judge Sleet said it was "extraordinary" that the Delaware
17 defendants had refused to produce their initial disclosure documents, and their counsel
18 conceded that the Delaware defendants' "initial disclosure was inartfully drafted." (Ex.
19 2, 8/28/03 transcript at 54.) Ricoh has requested that the defendants either produce
20 these documents or submit a revised initial disclosure. Despite the Court's instructions
21 to defendants, they have refused even to respond to Ricoh's request.

22 ?? The Delaware defendants have withheld almost all of their confidential documents,
23 including those concerning the design libraries and source code which would provide
24 confirmation of patent infringement, and recently refused to engage in a meet-and-
25 confer to resolve the matter, even though a Protective Order protecting confidential
26 information has been entered. The Delaware court ordered the parties to resolve all
27
28

1 such issues quickly, and the Delaware defendants had represented to the Delaware
2 Court that it would make such production by mid-September. (Ex. 2, 8/28/03 transcript
3 at 67-68.) To date, the representation has not been honored.

4 ?? Synopsys has refused to produce virtually any documents in response to Ricoh's
5 subpoena, and recently refused to engage in a meet-and-confer to resolve the matter,
6 even though the Delaware court ordered counsel to meet and resolve all such issues by
7 September 5, 2003 and Synopsys had represented to the Delaware Court that it would
8 make production by mid-September. (*Id.*) To date, the representation has not been
9 honored.

10 ?? Synopsys has refused to provide certain documents pursuant to the subpoena which was
11 served on it on the grounds the documents should be obtained from the Delaware
12 defendants while the Delaware defendants (represented by the same counsel) refuse to
13 provide the same documents on the grounds they are confidential to Synopsys.

14 ?? The Delaware defendants have not timely served notices of subpoenas upon counsel for
15 Ricoh, which has led to problems with respect to counsel contacting persons already
16 represented by Ricoh's counsel.

17
18 **Issue No. 4: Whether the court-ordered investigation for possible fraud on the Delaware**
19 **court will be resolved.** The day before it transferred the case, the Delaware court agreed that counsel
20 for the Delaware defendants and Synopsys may have committed a fraud upon the Court by
21 misrepresenting the circumstances of their actions in persuading an expert consultant under contract to
22 Ricoh to switch sides. Contrary to Synopsys' counsel representation to the Delaware court, this expert
23 had received confidential work product information from Ricoh's counsel; when deposed, the expert
24 testified that he received such information. Synopsys' counsel engaged the expert even though it knew
25 of the conflict.

26
27 On July 30, 2003, the Delaware court ordered the Delaware defendants, Synopsys and their
28 counsel to cease all communications with the expert, and also ordered expedited discovery on the

1 issue. At a subsequent hearing on August 28, 2003, the court agreed with counsel for Ricoh that the
2 conduct of counsel for Synopsys and the Delaware defendants "created an issue of potential fraud upon
3 the Court":

4 MR. HOFFMAN: . . . Your Honor, I think that the whole issue of making certain
5 representations to the Court that they know are inconsistent and these documents that we are asking
6 be turned over to the Court may further our belief, support our belief, does create an issue of
7 potential fraud upon the Court.

8 THE COURT: I think it does.

9 (Ex. 2, 8/28/03 transcript at 29.) During that same hearing, the Court ordered counsel for Synopsys
10 and the Delaware defendants to produce for in camera inspection "a handful" of documents on this
11 matter, and to provide a log of the documents to Ricoh's counsel. (*Id.* at 23, 27-33.) Synopsys' counsel
12 has refused to comply with this order, however.

13 **Issue No. 5: Whether Synopsys' claim with respect to the '016 patent should be**
14 **dismissed, since that patent was not discussed in the September 22 opinion and Ricoh has not**
15 **sued or threatened to sue any entity on that patent.** A particularly unusual issue exists with respect
16 to the '016 patent: Ricoh has never sued or threatened to sue any entity with respect to that patent.
17 (See, e.g., Exhibit 3.) Ricoh has already covenanted that it will not sue Synopsys on the '016 patent
18 based upon the sale of Synopsys' current products. Given these facts, makes little sense to proceed on
19 the '016 patent.

20 If, however, Synopsys insists on maintaining its declaratory action on the '016 patent, then
21 pursuant to Patent Local Rule 3-3 and 3-5, Synopsys should be obligated to come forward with its
22 Preliminary Invalidity Contentions including a claims chart showing why none of its products infringe
23 the '016 patent. Synopsys is the only party raising an issue on the '016 patent in seeking an
24 adjudication that none of its products infringe the '016 patent. Ricoh has not asserted the '016 patent
25 against any party and yet Synopsys is trying to put the burden on Ricoh to prove infringement on the
26 '016 patent. As established by Pat. L. R. 3-1, 3-5, Ricoh has no obligation with respect to the '016
27 patent to provide any disclosure of asserted claims nor any Preliminary Infringement Contentions.
28

2. Principal factual and legal issues in dispute.

a. Synopsys' Position

(1) Synopsys' comment on Ricoh's identification of the principal factual and legal issues in dispute*

As with Ricoh's description of the case, Synopsys objects to Ricoh's identification of factual and legal issues that are irrelevant to this declaratory judgment action and even in Ricoh's view relevant only to the Delaware case.

(2) Synopsys' Description

- a. The proper construction of the '432 patent claims;
- b. The proper construction of the '016 patent claims;
- c. Whether Synopsys' Design Compiler software infringes any properly construed claim of the '432 patent;
- d. Whether Synopsys' Design Compiler software infringes any properly construed claim of the '016 patent;
- e. The validity of the '432 patent claims;
- f. The validity of the '016 patent claims.

b. Ricoh's Description

*Factual issues relating to jurisdiction:*²

- a. Whether Ricoh does business in California.
- b. Whether Ricoh has ever licensed or otherwise authorized anyone in California to sell products embodying the '432 patent.
- c. Whether Ricoh or anyone else sells or offers for sale any Ricoh products embodying the '432 patent in California.
- d. Whether Ricoh ever communicated with Synopsys regarding the '432 patent.

² If the facts do not support Synopsys' claims with respect to jurisdiction over Ricoh, then dismissal of Synopsys' declaratory judgment complaint would be required. In addition, if the '016 patent remains in the case, then the factual issues listed herein would also apply to that patent.

1 e. Whether there is any connection between Ricoh, the patented process disclosed in the
2 '432 patent, and California.

3 f. Whether there is a nexus between the Ricoh products placed into commerce and the
4 '432 patent.

5 g. Whether Synopsys' declaratory judgment action arose out of, or related to, Ricoh's in-
6 state activities.

7 h. Whether there was an alleged communication with Synopsys by a then co-owner (and
8 not Ricoh) of the '432 patent, and if so, whether that communication has any effect upon the pending
9 litigation with respect to the Delaware defendants, all of whom were unaware of the alleged
10 communication.

11 *Factual issues relating to Ricoh's claims against the Delaware defendants:*

12 i. Whether the Delaware defendants, as the actual ASIC chip designers and/or
13 manufacturers, are the real parties in interest.

14 j. Whether the Delaware defendants practice the process disclosed in the '432 patent.

15 k. Whether the Delaware defendants can prove that the claims of the '432 patent are
16 invalid.

17 l. The amount of damages to be awarded to Ricoh.

18 m. Whether the Delaware defendants acted willfully in infringing the '432 patent.

19 *Factual issues relating to Synopsys' declaratory judgment action:*

20 n. Whether Synopsys' Complaint seek only an advisory opinion concerning the '432
21 patent, since Ricoh has made no infringement allegation against Synopsys or its customers.

22 o. Whether Synopsys' Complaint with respect to the '016 patent should be dismissed,
23 since Ricoh has never threatened to sue either Synopsys or any of its customers on that patent.

24 p. Whether Synopsys can prove that none of its products infringe or induce infringement
25 of the '016 patent.

26 *Ricoh's statement of disputed legal issues:*

27 q. Whether the Delaware defendants infringe the '432 patent.
28

1 r. Whether Synopsys and the Delaware defendants can prove by clear and convincing
2 evidence that the '432 patent is not valid.

3 s. Whether the Delaware defendants can prove its asserted estoppel and laches that would
4 preclude Ricoh from enforcing its '432 patent against the Delaware defendants or limit Ricoh's right to
5 damages.

6 t. Whether, with respect to the '016 patent, Synopsys seeks a purely advisory opinion
7 since Ricoh has not asserted the '016 patent against Synopsys nor any of Synopsys' customers.

8 **3. The other factual issues which remain unresolved:**

9 **a. Synopsys' Description**

10 None.

11 **b. Ricoh's Description**

12 Ricoh believes that the principal issues are set forth above.

13 **4. Parties which have not been served:**

14 None.

15 **5. The additional parties which the parties intend to join and the intended**
16 **time frame for such joinder:**

17 **a. Synopsys' Position.**

18 Synopsys believes that there are no additional parties that need to be joined in this action.

19 Synopsys further objects to Ricoh's position regarding joinder of parties. Aeroflex is not a
20 party to this action, and, therefore, joining Aeroflex's subsidiary Aeroflex UTMC is nonsensical.

21 **b. Ricoh's Position.**

22 On August 19, 2003, Delaware defendant Aeroflex disclosed that its subsidiary, Aeroflex
23 UTMC, was a purchaser of relevant software from plaintiff Synopsys, and that another company may
24 also engage in relevant design work. These entities may be appropriate for joinder after consolidation.

25 **6. The following parties consent to assignment of this case to the United States**
26 **Magistrate Judge for trial:**

27 If the Court desires for scheduling purposes, Ricoh is amenable to having the Markman hearing
28 and any related tutorial held before a Magistrate Judge. Synopsys does not consent to an assignment to

1 a Magistrate Judge for any purpose. Neither party consents to assignment to a Magistrate Judge for
2 trial.

3 **ALTERNATIVE DISPUTE RESOLUTION**

4 **7. The parties have not filed a Stipulation and Proposed Order Selecting an** 5 **ADR process and the ADR process to which the parties jointly (or** 6 **separately) request referral:**

7 **a. Synopsys' Position**

8 Since the parties have unsuccessfully engaged in negotiations, Synopsys does not believe that
9 pursuing any ADR would be effective at this time. However, if Synopsys were required to choose an
10 ADR procedure, Synopsys would request referral to the Court's ENE ADR process.

11 **b. Ricoh's Position**

12 There has been a single meeting between business representatives of Ricoh and Synopsys, but
13 the parties have not engaged in negotiations. Ricoh has invited the Delaware defendants to negotiate
14 with respect to a license, but the Delaware defendants have refused. Ricoh is willing to enter into
15 ADR with the Delaware defendants. Ricoh is also willing to enter into an ADR with Synopsys,
16 however, Ricoh recognizes that an ADR with Synopsys may not be fruitful until further discovery has
17 been completed. If Ricoh were required to choose an ADR procedure, Ricoh would prefer mediation
18 by a knowledgeable patent attorney.

19 **DISCLOSURES**

20 **8. The parties certify that they have made the following disclosures:**

21 Pursuant to FRCP Rule 26(a)(1), the parties have agreed to exchange initial disclosures by
22 November 12, 2003.

23 Ricoh notes that, in the Delaware action, Ricoh has filed its initial disclosures in the Delaware
24 action and produced documents identified therein. The Delaware defendants have submitted their
25 initial disclosures (which they later asserted were "inartfully drafted"), but have refused to produce *any*
26 of the documents identified in *any* of the categories of those disclosures. Almost all of the documents
27 that those defendants have produced in response to Ricoh discovery requests is prior art. Few of these
28 documents relate to Ricoh's infringement claims or those defendants design or manufacture of ASIC

1 computer chips. Synopsys has repeatedly refused to produce documents in response to Ricoh's
2 subpoena and has produced only a small number of documents to date in the now transferred Delaware
3 action (some of which only because production was compelled by this court at the motion to dismiss
4 hearing).

5 In response to Ricoh's statement, Synopsys notes that the initial disclosures filed in the
6 Delaware case are irrelevant to this action and this case management conference.

7 **DISCOVERY**

8 **9. The parties agree to the following discovery plan:**

9 **a. Synopsys' Position.**

10 Synopsys believes that discovery should be limited as provided by the Federal Rules of Civil
11 Procedure, but is willing to agree that each side be allowed 105 hours of deposition testimony. Also,
12 because many of Ricoh's witnesses will likely require a translator, each hour of deposition testimony
13 requiring translation will be treated as 30 minutes against this time limit.

14 **b. Ricoh's Position.**

15 In the Delaware action, counsel for the parties agreed that each side would have 240 hours of
16 deposition testimony. Ricoh believes that such a modification of the Federal Rules of Civil Procedure
17 is useful here.

18 **PROPOSED SCHEDULE**

19 **10. A proposed schedule is provided below:**

20 **a. Synopsys' Position.**

21 It became apparent, at the meet and confer, that Ricoh intends to argue that it need not serve a
22 Disclosure of Asserted Claims with respect to the '016 patent because it takes the position that it has
23 not accused any party of infringing that patent. However, Ricoh's stated position stands in stark
24 contrast to the facts; Ricoh has clearly asserted that the '016 patent has been infringed. First, as
25 demonstrated in Synopsys' opposition to Ricoh's motion to dismiss, Ricoh has asserted the '016 patent
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27
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1 against Synopsys' customers in cease and desist correspondence. Furthermore, in answer to Synopsys'
2 complaint, Ricoh denies Synopsys' allegation that no Synopsys product infringes the '016 patent.³

3 However, if Ricoh extends its covenant not to sue Synopsys to cover all of Synopsys'
4 customers' use of Synopsys' Design Compiler software, or stipulates to a judgment that the use of the
5 Design Compiler software does not infringe the '016 patent, Synopsys would agree to dismiss Counts
6 III and IV of the Complaint. Otherwise, Patent L.R. 3-1 requires that "[n]ot later than 10 days after the
7 Initial Case Management Conference, a party claiming patent infringement must serve on all parties a
8 'Disclosure of Asserted Claims and Preliminary Infringement Contentions.'" Therefore, the Patent
9 Local Rules require that Ricoh serve its Preliminary Infringement Contentions for both the '432 and
10 '016 patents within 10 days of the October 28, 2003 Initial Case Management Conference (i.e.,
11 November 12, 2003) as provided in Synopsys' Proposed Case Schedule. Ricoh's assertion that
12 Synopsys should instead provide a non-infringement chart for the '016 patent is not only contrary to
13 the Patent Local Rules but is simply absurd.

14 Last, by improperly separating the '432 and '016 patents, Ricoh would impose an inefficient
15 schedule for the adjudication of these related patents.⁴ Assuming Ricoh's hypothesis, under the Patent
16 Local Rules adjudication of the '016 patent should follow a considerably different procedural path than
17 the '432 patent. For example, the Exchange of Proposed Terms and Claim Elements for Claim
18 Construction would be November 24, 2003 for the '016 patent and January 15, 2004 for the '432
19 patent (10 days after Preliminary Invalidity Contentions (Pat. L. R. 4-1(a)). It would of course follow
20 that two claim construction hearings would be necessitated by Ricoh's position.⁵ Ricoh's argument is
21 contrary to the facts, inconsistent with the Patent Local Rules, and simply an inefficient use of judicial
22 resources.

23
24 ³ Ricoh has also accused Synopsys' customers of infringing the '432 patent both in correspondence
25 and in the transferred Delaware action. Furthermore, in answer to Synopsys' Complaint, Ricoh also
denies the allegation that no Synopsys product infringes the '432 patent.

26 ⁴ The application which resulted in the '016 patent was a continuation-in-part of the '432 patent
application.

27 ⁵ Ricoh's proposed schedule obviously deviates considerably from that required by the Patent Local
28 Rules for the '016 patent.

1 The following schedule proposed by Synopsys follows the timing set forth in the Patent local
 2 Rules except for the proposed date for the Preliminary Invalidity Contentions, which was extended
 3 until after the New Years Holiday (i.e., January 5, 2004).

4 **b. Ricoh's Position.**

5 Ricoh asserted an infringement claim with respect to the '432 patent, but has not asserted any
 6 infringement claim with respect to the '016 patent. By filing an overbroad declaratory judgment
 7 action, Synopsys has injected the '016 patent into this litigation. The patent local rules specifically
 8 provide that a declaratory judgment plaintiff such as Synopsys bears the burden of producing its
 9 Preliminary Invalidity Contentions. As shown by Ricoh's proposal, following the local rules with
 10 respect to each of the patents is not inefficient; only one hearing will be necessary.⁶

11 **The '432 Patent.** Ricoh agrees that, in a consolidated action against the Delaware defendants
 12 and Synopsys, Ricoh should be treated as the party claiming infringement of its '432 patent.

13 **The '016 Patent.** With respect to the '016 patent, however, Ricoh *never* has claimed that the
 14 '016 patent has been infringed. Synopsys is wrong when it claims (in section 10(a), *supra*) that "in
 15 answer to Synopsys' complaint, Ricoh denies Synopsys' allegation that no Synopsys product infringes
 16 the '016 patent." Ricoh's answer states that Ricoh "has not asserted any allegation of infringement of
 17 the '016 patent against Synopsys, the Delaware defendants or the companies to whom Ricoh has
 18 offered licenses under the '432 and '016 patents." (Ricoh Answer ¶ 8.) Paragraph 22 of the Answer
 19 states:

20 Ricoh lacks information sufficient to form a belief as to whether Synopsys has made, used,
 21 offered to sell or sold, within the United States, or imported into the United States, any
 22 products or processes that infringe any valid claim of the '016 Patent, either directly, indirectly,
 23 contributorily or otherwise, and has induced others to infringe the '016 Patent and on that basis,
 24 denies that allegation.

25 Likewise, Synopsys erroneously asserts that Ricoh has threatened others with respect to the
 26 '016 patent. Ricoh has never said or threatened to sue anyone on the '016 patent. Synopsys has
 27 mischaracterized Ricoh's licensing letters as "threats" and "cease and desist correspondence", when

28 ⁶ It is likely that Synopsys would drop its declaratory judgment claim with respect the '016 patent
 rather than produce its Preliminary Invalidity Contentions as required by the local rules.

1 even a casual review reveals that the letter simply places the recipient on notice and invites a dialog on
2 licensing. (See example attached as Exhibit 3.) Ricoh has already covenanted that it will not sue
3 Synopsys on the '016 patent based upon Synopsys' current products. Given these facts, it makes no
4 sense to proceed on the '016 patent. The declaratory judgment claim with respect to the '016 patent
5 should be dismissed without prejudice.

6 If, however, Synopsys insists on maintaining its declaratory action on the '016 patent, then it
7 should be obligated to come forward with its Preliminary Invalidity Contentions. Pursuant to Pat. L.
8 R. 3-5 and 3-3, Synopsys should provide to Ricoh, within 10 days of the Case Management
9 Conference, its Preliminary Invalidity Contentions which should include a claims chart showing why
10 none of its products infringe the '016 patent. Synopsys is the only party seeking an adjudication
11 relating to the '016 patent. Even though Ricoh has not asserted the '016 patent against any party, or
12 even any non-party, Synopsys is trying to put the burden on Ricoh to prove infringement on the '016
13 patent. Pat. L. R. 3-5 establishes that since Synopsys has filed this declaratory judgment action
14 seeking resolution that the '016 patent is not infringed, is invalid, or is unenforceable and that Synopsys
15 has not filed this in response to any complaint alleging infringement of the '016 patent, Ricoh has no
16 obligation to provide a "Disclosure Of Asserted Claims And Preliminary Infringement Contentions."
17

18 Ricoh's proposed dates with respect to the '016 patent have been dovetailed to match up with
19 the dates relating to the '432 patent. Contrary to Synopsys' representation that the '016 patent would
20 follow a "considerably different procedural path," Ricoh's proposed schedule easily accommodates the
21 obligations of both parties, and only one claim construction hearing would be required.

22 **c. The Parties' Proposed Schedules.**

23 The parties largely are in agreement with respect to the proposed schedule, with a couple of
24 exceptions: (1) whether Ricoh is required to file a Disclosure of Asserted Claims and Preliminary
25 Infringement Contentions pursuant to Pat. L.R. 3-1 for the '016 patent on November 12, 2003, or
26 Synopsys is required to file its Preliminary Invalidity Contentions pursuant to Pat. L.R. 3-5(a) on
27
28

November 12, 2003; and (2) the date for disclosure of reliance upon opinions of counsel. With respect to post-Markman hearing events, Ricoh has added dates that are consistent with the patent local rules.

Event	Time (Patent Local Rule, if applicable)	Synopsys' Proposed Date	Ricoh's Proposed Date
Disclosure of Asserted Claims and Preliminary Infringement Contentions (for both the '432 patent and the '016 patent)	10 days after Initial Case Management Conference (Pat. L. R. 3-1)	November 12, 2003	N/A (see next 2 entries)
Ricoh's Disclosure of Asserted Claims and Preliminary Infringement Contentions ('432 Patent)		November 12, 2003	November 12, 2003
Ricoh's Disclosure of Asserted Claims and Preliminary Infringement Contentions ('016 Patent)		November 12, 2003	No response required. (Pat. L. R. 3-5)
Synopsys' Disclosure of Basis for Declaratory Judgment Claims III and IV, Identification of Products that Synopsys Claims Are Not Infringed and Bases for its Preliminary Non-Infringement Contentions ('016 Patent)		Ricoh's attempt to manufacture a requirement that Synopsys provide a non-infringement disclosure for the '016 patent has no basis in the Patent local Rules. Synopsys is simply not required to make any such disclosure at anytime.	November 12, 2003. Ricoh believes that disclosure should be provided 10 days after the later of the Initial Case Management Conference or the Defendant Serves his answer (<i>cf.</i> Pat. L. R. 3-5, and 3-3)
Deadline to join parties and amend pleadings	L.R. 16-10(b)	December 29, 2003	December 29, 2003
Preliminary Invalidity Contentions (the '432 patent)	45 days after Disclosure of Asserted Claims (Pat. L. R. 3-3)	January 5, 2004	January 5, 2004
Preliminary Invalidity Contentions (the '016 patent)	No later than 10 days after the defendant serves its answer, or 10 days after the Initial Case Management Conference, which ever is later. (Pat. L. R. 3-3)	January 5, 2004	November 12, 2003
Exchange of Proposed Terms and Claim Elements for Construction	10 days after Preliminary Invalidity Contentions (Pat. L. R. 4-1(a))	January 15, 2004	January 15, 2004
Exchange of Proposed Claim Constructions and Extrinsic Evidence	20 days after Exchange of Proposed Terms and Claim Elements (Pat. L. R. 4-2(a))	January 26, 2004	January 26, 2004
Joint Claim Construction and Prehearing Statement	60 days after Preliminary Invalidity Contentions (Pat. L. R. 4-3)	March 5, 2004	March 5, 2004
Completion of Claim Construction Discovery	30 days after Joint Claim Construction and Prehearing Statement (Pat. L. R. 4-4)	April 2, 2004	April 2, 2004

Event	Time (Patent Local Rule, if applicable)	Synopsys' Proposed Date	Ricoh's Proposed Date
Opening Claim Construction Brief	45 days after Joint Claim Construction and Prehearing Statement (Pat. L. R. 4-5(a)) (15 days after Completion of Claim Construction Discovery)	April 20, 2004	April 20, 2004
Responsive Claim Construction Brief	14 days after Opening Claim Construction Brief (Pat. L. R. 4-5(b))	May 4, 2004	May 4, 2004
Reply Claim Construction Brief	7 days after Responsive Claim Construction Brief (Pat. L. R. 4-5(c))	May 11, 2004	May 11, 2004
Claim Construction Hearing	At least 14 days after Reply Claim Construction Brief (Pat. L. R. 4-6)	No earlier than May 25, 2004	No earlier than May 25, 2004
Claim Construction Ruling		Provided by the Court	Provided by the Court
Final Infringement Contentions (the '432 patent)	30 days after claim construction ruling (CCR)(Pat. L. R. 3-6)	30 days after claim construction ruling ("CCR")	July 16, 2004
Final Infringement Contentions (the '016 patent)		30 days after claim construction ruling ("CCR")	No obligation as there is no obligation to provide preliminary Infringement Conditions. (Pat. L. R. 3-5)
Final Invalidity Contentions	50 days after claim construction ruling (CCR)(Pat. L. R. 3-6)	50 days after CCR	August 13, 2004
Fact discovery cut-off		30 days after CCR	July 16, 2004
Deadline to disclose reliance upon opinion of counsel and produce related documents ⁷	50 days after claim construction ruling (CCR)(Pat. L. R. 3-8)	50 days after CCR	December 29, 2003 (date agreed to under the Delaware Scheduling Order)
Submission of expert reports by party with the burden of proof		50 days after CCR	August 13, 2004

⁷ Synopsys states: Ricoh's attempt to insert this event earlier in the schedule is improper and contrary to the Patent local Rules. Under Patent L.R. 3-8, a party opposing a claim of patent infringement that intends to rely on an opinion of counsel must produce all related documents 50 days after service of the claim construction ruling. Ricoh's statement is misleading. Synopsys was not a party to the Delaware action or any agreement to provide an opinion of counsel earlier than the local rules require.

Ricoh states: Counsel for all of the parties agreed, and the Delaware court ordered, that opinions of counsel should be disclosed and the document produced on December 29, 2003. The Delaware defendants' counsel simultaneously represented Synopsys and was mindful of Synopsys' interests when it agreed upon this date. Synopsys and the Delaware defendants should be obligated to comply with this agreement as set forth in the Delaware Scheduling Order.

Event	Time (Patent Local Rule, if applicable)	Synopsys' Proposed Date	Ricoh's Proposed Date
Submission of responsive expert reports		70 days after CCR	September 3, 2004
Expert discovery cut-off		90 days after CCR	September 24, 2004
Dispositive motion cut-off		110 days after CCR	October 8, 2004
File motions in limine		160 days after CCR	November 19, 2004
File oppositions to motions in limine		170 days after CCR	December 2, 2004
File Joint Proposed Final Pre-trial Order		190 days after CCR	December 22, 2004
Pre-trial Conference		197 days after CCR	January 4, 2005
Trial Date		No earlier than 210 days after CCR	January 18, 2005

CLAIM CONSTRUCTION HEARING

11. Hearing date:

The parties propose that a Claim Construction Prehearing Conference be held on a date to be set by the Court prior to the Claim Construction Hearing. The parties further propose that the Claim Construction Hearing be held before the Court on May 25, 2004 (if the Court's schedule permits).

12. Tutorial:

The parties believe that it would be helpful to present tutorial information about the technology underlying the case in advance of the Claim Construction Hearing.

13. Live Testimony:

The parties would like to reserve the right to use live testimony at the Claim Construction Hearing (exclusive of the time required for any tutorial) and believe that the total presentation (testimony and argument) will be approximately four hours divided equally between Synopsys and Ricoh.

14. Order of Presentation:

a. Synopsys' Position.

Synopsys, as the plaintiff in this action, believes that it should present its arguments and testimony regarding the proper construction of the '432 and '016 patent claims first at the Claim

1 Construction Hearing. Ricoh's comments about infringement below are not only contrary to the
2 applicable law but irrelevant to the issue order of presentation at the claim construction hearing.

3 **b. Ricoh's Position.**

4 Ricoh has made no assertions against Synopsys or Synopsys' customers as to the '016 patent.
5 Consequently, Synopsys should present and bear the burden of proving non-infringement as to the '016
6 patent, since Synopsys is the only party insisting on litigating the '016 patent even though there is no
7 justiciable controversy regarding this patent. However, with respect to issues of claim construction,
8 since Ricoh is the owner of these patents, Ricoh submits that as the process is followed in virtually
9 every patent litigation, the patent owner should go first at the Claim Construction Hearing.
10

11 **TRIAL**

12 **15. The parties request a trial date as follows:**

13 January 18, 2005

14 **16. The parties expect that the trial will last for the following number of days:**

15 **a. Synopsys' Position.**

16 Synopsys proposes eight trial days for the declaratory judgment action.

17 **b. Ricoh's Position.**

18 Ten trial days for the consolidated action.
19

20 Dated: October 20, 2003

HOWREY SIMON ARNOLD & WHITE, LLP

21
22
23 By: /s/
Teresa M. Corbin
Attorneys for Plaintiff Synopsys, Inc.
24
25
26
27
28

1 Dated: October 20, 2003

DICKSTEIN SHAPIRO MORIN & OSHINSKY

2
3 By: /s/
4 Jeffrey B. Demain
5 Gary M. Hoffman
6 Attorneys for Defendant Ricoh Company, Ltd.
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CASE MANAGEMENT ORDER

The Case Management Statement and Proposed Order is hereby adopted by the Court as the Case Management Order for the case and the parties are ordered to comply with this order. In addition the Court orders:

Dated: _____

HON. MARTIN J. JENKINS

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JOINT CASE MANAGEMENT CONFERENCE STATEMENT AND PROPOSED ORDER

Case No. C03-02289 MJJ
1679869 v1; 1007101!.DOC

56

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

RICOH COMPANY, LTD.

Plaintiff,

v.

AEROFLEX INCORPORATED, AMI
SEMICONDUCTOR, INC., MATROX
ELECTRONIC SYSTEMS LTD.,
MATROX GRAPHICS INC., MATROX
INTERNATIONAL CORP. and
MATROX TECH, INC.

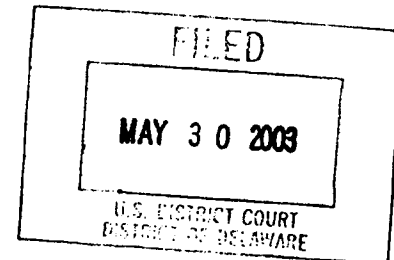
Defendants.

RECEIVED

MAY 30 2003

Robert W. Whetzel

C.A. No.03-103-GMS



SCHEDULING ORDER

This 30th day of May 2003, the Court having conducted an initial Rule 16 scheduling and planning conference pursuant to Local Rule 16.2(b) on May 16, 2003, and the parties having determined after discussion that the matter cannot be resolved at this juncture by settlement, voluntary mediation or binding arbitration;

IT IS ORDERED that:

1. **Rule 26(a) Initial Disclosures.** Unless otherwise agreed to by the parties, they shall make their initial disclosures pursuant to Federal Rule of Civil Procedure 26(a) on or before May 30, 2003.
2. **Joinder of other Parties and Amendment of Pleadings.** All motions to join other parties and amend the pleadings shall be filed on or before July 30, 2003.
3. **Reliance Upon Advice of Counsel.** Defendants shall inform plaintiff whether they intend to rely upon advice of counsel as a defense to willful infringement no later than

December 9, 2003. If defendants elect to rely on advice of counsel as a defense to willful infringement, defendants shall produce any such opinions on which defendants intend to rely to plaintiff no later than December 19, 2003.

4. **Markman Claim Construction Hearing.** A *Markman* claim construction hearing shall be held on March 2, 2004 at 9:30 a.m. The *Markman* hearing is scheduled for a total of not more than 1 day. The parties shall meet and confer regarding narrowing and reducing the number of claim construction issues no later than January 5, 2004 and shall exchange initial claim charts no later than January 12, 2004. On or before January 20, 2004, the parties shall submit a final joint claim chart which shall include citations to intrinsic evidence. The parties shall exchange opening claim construction briefs on January 23, 2004, and the answering claim construction briefs on February 6, 2004.

5. **Discovery.** All fact discovery in this case shall be initiated so that it will be completed on or before January 9, 2004. Opening expert reports shall be exchanged on March 22, 2004 and rebuttal expert reports shall be exchanged on April 23, 2004. Expert Discovery in this case shall be initiated so that it will be completed on or before June 23, 2004. The total time allowed for depositions shall be 240 hours per side, excluding expert discovery, unless extended by agreement of the parties.

a. **Discovery Disputes.** Should counsel find they are unable to resolve a discovery dispute, the party seeking the relief shall contact chambers at (302) 573-6470 to schedule a telephone conference. Not less than forty-eight hours prior to the conference, by hand delivery or facsimile at (302) 573-6472, the party seeking relief shall file with the Court a letter agenda not to exceed two (2) pages outlining the issues in dispute. Should the Court find further

briefing necessary upon conclusion of the telephone conference, the Court shall order the party seeking relief to file with the Court a **TWO PAGE LETTER**, exclusive of exhibits, describing the issues in contention. The responding party shall file within five (5) days from the date of service of the opening letter an answering letter of no more than **TWO PAGES**. The party seeking relief may then file a reply letter of no more than **TWO PAGES** within three (3) days from the date of service of the answering letter.

6. **Confidential Information and Papers filed under Seal.** Should counsel find it will be necessary to apply to the Court for a protective order specifying terms and conditions for the disclosure of confidential information, they should confer and attempt to reach an agreement on a proposed form of order and submit it to the Court within 10 days from the date of this order. When filing papers under seal, counsel should deliver to the Clerk an original and two copies of the papers.

If after making a diligent effort the parties are unable to agree on the contents of the joint proposed protective order, then they shall follow the dispute resolution process outlined in paragraph 5(a).

7. **Settlement Conference.** Pursuant to 28 U. S.C. §636, this matter is referred to the United States Magistrate for the purpose of exploring the possibility of a settlement. If the parties agree that the possibility of settlement may be enhanced by such referral, the parties shall contact Magistrate Judge Thyng to schedule a settlement conference with counsel and clients.

8. **Summary Judgment Motions.** Prior to filing any summary judgment motion, the parties must submit letter briefs seeking permission to file the motion. The opening letter brief shall be no longer than five (5) pages and shall be filed with the Court no later than

February 12, 2004. Answering letter briefs shall be no longer than five (5) pages and filed with the Court no later than February 27, 2004. Reply letter briefs shall be no longer than three (3) pages and filed with the Court on or before March 8, 2004. The Court shall hold a status conference to hear argument and to determine whether the filing of any motion will be permitted on March 23, 2004 at 11:00 a.m. **Unless the Court directs otherwise, no letter requests to file a motion for summary judgment may be filed at a time before the dates set forth in paragraph 8.**

9. **Case Dispositive Motions.** Should the Court permit the filing of summary judgment motions an opening brief and affidavits, if any, in support of the motion shall be served and filed on or before April 2, 2004. Parties must submit an original and two (2) copies. Briefing will be presented pursuant to the Court's Local Rules, unless the parties agree to an alternative briefing schedule. Any such agreement shall be in writing and filed with the Court for approval.

10. **Applications by Motion.** Except as provided in this Order or for matters relating to scheduling, any application to the Court shall be by written -motion filed with the Clerk. Unless otherwise requested by the Court, counsel shall not deliver copies of papers or correspondence to Chambers. Any non-dispositive motion should contain the statement required by Local Rule 7.1.1.

11. **Oral Argument.** If the Court believes that oral argument is necessary, the Court will schedule a hearing Pursuant to Local Rule 7.1.4.

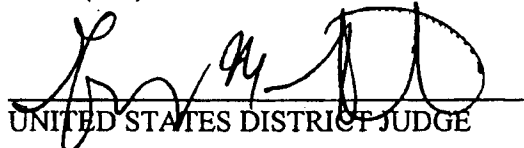
12. **Status/Daubert Conference.** On or before June 30, 2004, the parties shall meet and confer on any Daubert issues and motion in limine issues that any party wants to raise. On or before July 2, 2004, the parties shall submit a joint agenda identifying any Daubert issues that the

parties intend to raise. The Court will hold a telephone conference on July 7, 2004 at 11:00 a.m. to discuss Daubert issues identified in the joint agenda.

13. **Pretrial Conference.** On September 13, 2004, the Court will hold a Pretrial Conference in Chambers with counsel beginning at 9:30 a.m. Unless otherwise ordered by the Court, the parties should assume that filing the pretrial order satisfies the pretrial disclosure requirement in Federal Rule of Civil Procedure 26(a)(3). Thirty (30) days before the joint proposed pretrial order is due, plaintiff's counsel shall forward to defendants' counsel a draft of the pretrial order containing the information plaintiff proposes to include in the draft. Defendants' counsel shall, in turn, provide to plaintiff's counsel any comments on the plaintiff's draft as well as the information defendants propose to include in the proposed pretrial order. *Motions in limine:* No party shall file more than ten (10) motions in limine. Briefs (opening, answering and reply) on all motions *in limine* shall be filed by August 6, 2004. Opening and answering briefs shall not exceed five (5) pages and reply briefs shall not exceed three (3) pages. The parties shall file with the Court the joint proposed final pretrial order with the information required by the form of Final Pretrial Order which accompanies this Scheduling Order on or before August 16, 2004.

14. **Trial.** This matter is scheduled for a seven day jury trial beginning at 9:00 a.m. on October 12, 2004.

15. **Scheduling.** The parties shall direct any requests or questions regarding the scheduling and management of this matter to Chambers at (302) 573-6470.


UNITED STATES DISTRICT JUDGE

1 IN THE UNITED STATES DISTRICT COURT
2 IN AND FOR THE DISTRICT OF DELAWARE

3 - - -

4 RICOH COMPANY, LTD., : Civil Action
5 :
6 Plaintiff, :
7 :
8 v. :
9 :
10 AEROFLEX INCORPORATED, AMI :
SEMICONDUCTOR, INC., :
11 MATROX ELECTRONIC SYSTEMS :
LTD., MATROX INC., GRAPHICS :
12 MATROX INTERNATIONAL CORP., :
and MATROX TECH, INC., :
13 Defendants. : No. 03-103-GMS

14 - - -

15
16 Wilmington, Delaware
17 Thursday, August 28, 2003
18 11:00 a.m.
19 Telephone Conference

20 - - -

21 BEFORE: HONORABLE GREGORY M. SLEET, U.S.D.C.J.

22 APPEARANCES:

23 ROBERT W. WHETZEL, ESQ., and
24 STEVEN J. FINEMAN, ESQ.
25 Richards, Layton & Finger
-and-
GARY M. HOFFMAN, ESQ.,
EDWARD A. MEILMAN, ESQ., and
KENNETH W. BROTHERS, ESQ.
Dickstein Shapiro Morin & Oshinsky LLP
(Washington, D.C.)

Counsel for Plaintiff

1 APPEARANCES CONTINUED:

2 FRANCIS DiGIOVANNI, ESQ.
Connolly Bove Lodge & Hutz LLP
3 -and-
4 TERESA M. CORBIN, ESQ.,
CHRISTOPHER KELLEY, ESQ., and
ERIC OLIVER, ESQ.
5 Howrey Simon Arnold & White, LLP
(Menlo Park, California)

6
Counsel for Defendants

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- - -

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9

10 THE COURT: Good morning, counsel.

11 MR. WHETZEL: Good morning, Your Honor. Bob
12 Whetzel from Richards Layton for plaintiff Ricoh. With me is
13 my colleague here at Richards Layton Steven Fineman. Also on
14 the call for Ricoh are Messrs. Gary Hoffman, Ed Meilman and
15 Ken Brothers, my co-counsel. I suspect Mr. Hoffman will be
16 our principal spokesperson this morning.

17 THE COURT: Good morning, all.

18 For defendants.

19 MR. DiGIOVANNI: Frank DiGiovanni from Connolly
20 Bove. Also on the line from Howrey Simon in California are
21 Teresa Corbin and Chris Kelley and Eric Oliver.

22 THE COURT: Who is going to handle the argument
23 today?

24 MR. DiGIOVANNI: I will be arguing the first of
25 the agenda items, and I believe Mr. Kelley will be arguing

1 the remainder.

2 MR. HOFFMAN: Your Honor, on behalf of Ricoh, Mr.
3 Brothers will be arguing the first item. I will be handling
4 Items 2, 3, 6 and 8. And Mr. Meilman will be handling items
5 5 and 7.

6 THE COURT: Okay. I will try to keep that roster
7 in mind.

8 Let's start with Item 1.

9 MR. BROTHERS: Your Honor, on Item 1, there is a
10 difference of opinion between the parties with respect to the
11 obligations of the order that the Court entered on July
12 31st --

13 MR. DiGIOVANNI: Your Honor, I don't mean to
14 interrupt. I don't do that. But we are the ones, the
15 defendants are the ones --

16 THE COURT: Are you the movant on that one?

17 MR. DiGIOVANNI: Yes, we are.

18 THE COURT: Let's start with the movant.

19 MR. BROTHERS: I am sorry. Both parties are
20 seeking relief, just to be clear.

21 THE COURT: So both of you, you each view
22 yourselves as movants?

23 MR. BROTHERS: Yes, Your Honor.

24 MR. DiGIOVANNI: Yes, Your Honor.

25 On behalf of defendants, we did place the call

1 and initiated the conference. We consider ourselves primary
2 movants on this issue.

3 MR. BROTHERS: Your Honor, we can both have our
4 say.

5 THE COURT: Mr. Brothers, continue.

6 MR. BROTHERS: Thank you.

7 The order of July 31st, the second paragraph
8 requires the defendants and their counsel to disclose all
9 communications with or relating to Dr. Thomas and to produce
10 all documents sent to, prepared by, or received from Dr.
11 Thomas. And then it continues, Any documents withheld on the
12 basis of attorney-client privilege or work product doctrine
13 should be submitted to the Court for an in camera inspection
14 and defendants shall provide plaintiffs with a detailed
15 privilege log.

16 We received part of those documents. We received
17 the e-mails and letters between the Howrey firm and Dr.
18 Thomas. But defendants and their counsel have refused to
19 produce anything else, namely, any internal communications on
20 an in camera basis to the Court and to give a privilege log
21 to the other side. We believe that is clearly required by
22 the order.

23 The history of this gives some basis for our
24 concern.

25 Dr. Thomas was deposed on August 14th. The

1 witness contradicted the representations of Mr. Kelley during
2 the hearing on the 30th on multiple points, which gives us
3 concern as to what the complete story is.

4 For example, you will recall that the Howrey firm
5 served Dr. Thomas with a subpoena in late June but never
6 provided that to counsel for plaintiffs or filed any notices
7 with the Court. And although Mr. Kelley said during the
8 hearing that Dr. Thomas had called them and said he wasn't
9 working for Ricoh, in fact, what these documents that were
10 produced and Dr. Thomas' testimony show is that Dr. Thomas
11 specifically told the Howrey firm that he was under contract,
12 a consulting contract, with counsel for Ricoh, that Dr.
13 Thomas specifically asked Howrey if they had given the
14 subpoena to counsel for Ricoh, and Howrey led him to believe
15 that the subpoena had been given and that the names of
16 experts had been disclosed in the litigation, and that
17 counsel for Ricoh had not named Dr. Thomas as an expert, so
18 Dr. Thomas assumed that we didn't want him as an expert,
19 which wasn't the case. And then the Howrey firm said,
20 according to Dr. Thomas' testimony, if you sever your
21 contract with Ricoh, then we can hire you and we can pay
22 you. And that's what Dr. Thomas did.

23 A second inconsistency was that Mr. Kelley said
24 very explicitly during the hearing that before Dr. Thomas was
25 hired, they asked him if he had received any confidential

1 information or discussed case strategy or other types of
2 information with Ricoh, and that Dr. Thomas had said, no, he
3 hadn't.

4 That is simply not the case.

5 Dr. Thomas was retained. The retention letter
6 was sent on July 17. He signed it on July 21st. The first
7 time any such communications of that nature came up was after
8 we found out about it and objected, and then suddenly there
9 was a flurry of telephone calls and e-mails between the
10 Howrey firm and Dr. Thomas saying, what confidential
11 information did you have? Tell us about it. And there was a
12 phone conference on the 23rd of July and followup e-mails.

13 Dr. Thomas testified at his deposition that there
14 was no question that he had received confidential information
15 from counsel for Ricoh. And he identified a couple of
16 categories of that.

17 During this flurry of information, after counsel
18 for Ricoh had objected, Dr. Thomas had described the
19 categories of this confidential information.

20 Now, Howrey refuses to produce those internal
21 e-mails. We had requested them even prior to the hearing,
22 and the Howrey firm understood we were looking for them.
23 There is a reference by Mr. Kelley in the transcript that, I
24 think it's on Page 14 or so, that he understood we were
25 looking for that information.

1 After all of this, the defendants say, well,
2 maybe we are not going to use Dr. Thomas as an expert after
3 all, but we still want to go forward and take his deposition
4 on the very subjects which were the subject matter on his
5 consulting with Ricoh.

6 They obviously believe that Dr. Thomas is going
7 to give them favorable opinions. Dr. Thomas testified that
8 as a result of his consulting with Ricoh he had formed
9 opinions. What is the basis for their expectation?

10 We need to go forward and try and resolve this.
11 We think the sole basis is that Dr. Thomas has given Howrey
12 some basis to believe that the testimony he is going to give,
13 the opinion testimony that they are seeking, is going to be
14 favorable, and that was developed solely as a result of his
15 confidential consulting with counsel for Ricoh.

16 The issue before the Court not only is the
17 interpretation of Paragraph 2 of the July 31st order. The
18 Court is also aware that we are to file followup letters that
19 will relate to the disqualification of Thomas and any other
20 remedies that might be available. We think it advisable that
21 the Court is provided with this information so it has the
22 full picture of what the appropriate remedy should be.

23 THE COURT: Okay. Mr. DiGiovanni.

24 MR. DiGIOVANNI: First of all, there is no
25 contradiction between what Mr. Kelley represented on the July

1 30th teleconference and Dr. Thomas' deposition. Dr. Thomas
2 was very clear that he was asked by the Howrey Simon
3 attorney, the one single attorney that he talked to for the
4 five-minute period he actually talked to him, do you have any
5 confidential information? And if so, what type of
6 information is it? And Dr. Thomas responded two days later
7 in an e-mail, just listing three short types of information
8 he had: patents, publications, and financial information.
9 None of it was confidential.

10 And all of those e-mails, that e-mail, and there
11 were about six or seven other e-mails, have been produced.
12 And those are the entire universe of documents that went back
13 and forth between Howrey Simon and Dr. Thomas.

14 If you go back to the teleconference on July
15 30th, the request that was made by Mr. Hoffman was that, you
16 ordered that the defendants be required to disclose all the
17 communications that they have had with Dr. Thomas, and
18 produce all the documents to us that have gone back and
19 forth. The Court subsequently ordered Ricoh's counsel to
20 prepare an order outlining the requests that you have made
21 and I will sign it.

22 But what happened later that day or maybe it was
23 the next day, July 31st, counsel submitted an order that
24 included an additional phrase, some additional language, Your
25 Honor, which actually went beyond what they were supposed to

1 submit. So that became this July 31st order.

2 The language of the order --

3 THE COURT: Is that the sentence that says any
4 documents withheld on the basis of attorney-client --

5 MR. DiGIOVANNI: No, Your Honor.

6 THE COURT: Which language is it?

7 MR. DiGIOVANNI: In the same paragraph, Paragraph
8 2, the first sentence, it says, No later than August 6, 2003
9 defendants and their counsel are ordered to, right where it
10 says disclose, it says disclose all communications with or
11 relating to Dr. Thomas. That clause was brand-new. That was
12 not part of what Your Honor ordered on that teleconference,
13 this disclose all communications with or relating to Dr.
14 Thomas. The second clause of that, ordered to produce all
15 documents sent to, prepared by or received from Dr. Thomas,
16 that's what we talked about on the teleconference. That's
17 what we have done. We have produced every single piece of
18 paper, all e-mails that were sent back and forth between
19 counsel and Dr. Thomas. It didn't amount to much. It was
20 only about six or seven e-mails.

21 We also gave them a cover letter to those
22 e-mails. It described the communications, and it also
23 described the type of internal communications that we had
24 amongst attorneys, between attorney and clients. We noted of
25 course those were privileged, that those weren't required

1 under the production portion of Paragraph 2, because
2 Paragraph 2 says, when it talks about producing documents, it
3 says, produce all documents sent to, prepared by or received
4 from. Then it goes on to talk about documents, any documents
5 withheld, et cetera, et cetera. So we didn't withhold any
6 documents on the basis of privilege. So there was nothing to
7 put on a privilege log. There was nothing to produce in
8 camera.

9 The issue is what does this mean, disclose all
10 communications with or relating to Dr. Thomas? And what
11 counsel for Ricoh is saying is that means that all documents
12 relating to Dr. Thomas had to be produced. That is
13 completely inconsistent with the second phrase, where it
14 talks about the exact scope of production of documents. Our
15 reading of it was, we disclosed in our cover letter precisely
16 what we were supposed to produce, precisely what kind of
17 communications went on.

18 Of course, we didn't produce them. The order
19 doesn't require it. It would never make sense to produce
20 privileged documents, even in camera. An in camera review is
21 often done to determine if there is a privilege, not to
22 actually review some privileged documents to find a basis for
23 a claim. But in any event, the order doesn't call for it,
24 before you even getting into the law regarding in camera
25 review.

1 It is also important, Your Honor, that once we
2 received the declaration of Christopher Monti (phonetic),
3 this is the declaration that Mr. Hoffman talked about on the
4 July 30th conference, once we received that, which, by the
5 way, was one week ago, we had to wait until one week ago to
6 get it, once we took the deposition of Dr. Thomas to find out
7 if, indeed, he received confidential information, once we had
8 those two pieces of information, two days later we said,
9 okay, we are not going to retain Dr. Thomas as an expert.
10 And we are not a hundred-percent convinced that he did
11 receive confidential information.

12 But we told them, all right, we are not going to
13 use him as an expert, fully expecting that would end
14 everything. But they said, no, they want to try to
15 disqualify counsel even though there isn't a shred of
16 information, shred of evidence anywhere stating that Dr.
17 Thomas provided to counsel for defendants any sort of
18 confidential information. In fact, Dr. Thomas,
19 unequivocally, testified that he had one conversation with
20 attorneys for defendants for five minutes. And here is his
21 quote. He says, I didn't share any information with him --
22 this is talking about the one attorney -- about confidential
23 material.

24 That is it.

25 THE COURT: Okay. Mr. Brothers, Mr. DiGiovanni

1 asserts that that clause that he has identified in Paragraph
2 2, all communications with or relating to, goes beyond the
3 letter and spirit of the discussion and subsequent order
4 entered by the Court orally on July 30th.

5 I don't have the transcript in front of me. I
6 don't have total recall. I don't really wish to engage in an
7 extended debate as to what was intended. But Mr.
8 DiGiovanni's reflections do seem to comport with my
9 recollection of that conversation. Go ahead.

10 MR. BROTHERS: Yes. I do have the copy of the
11 transcript in front of me. On Page 9 it references, Line 17
12 through 22, this aspect of the request. And I will read that
13 quote. And this relates to the second paragraph. Quote,
14 That the defendants be required to disclose all
15 communications that they have had with Dr. Thomas and produce
16 all the documents to us that have gone back and forth. If
17 they feel that any documents are privileged or work product,
18 then they can be submitted in camera. But we should get a
19 log so we can sort that out.

20 Prior to that, Mr. Hoffman had noted, on Page 8,
21 we didn't know the details of what had been discussed, and
22 then later on, Mr. Kelley acknowledged that we were seeking
23 the nature of their communications with Dr. Thomas.

24 The issue here is twofold. First, it is not only
25 the communications back and forth between Dr. Thomas and

1 counsel for the defendants. But second, the issue is what
2 did the Howrey firm know and when did it know it with respect
3 to the confidential information that Dr. Thomas had obtained
4 from counsel for Ricoh.

5 There are inconsistencies between Dr. Thomas'
6 testimony and what Mr. Kelley was representing.

7 Now, we ought to be very cautious here. We have
8 not sought to disqualify the Howrey firm. What we are trying
9 to do is get information so that an appropriate determination
10 can be made. What Mr. DiGiovanni has said is, well, we
11 thought by dropping Dr. Thomas that would be the end of it.
12 But they still want to go ahead and take his deposition on
13 the very topics that Mr. Thomas had provided his confidential
14 consulting to counsel for Ricoh. And they just want to sweep
15 under the carpet these inconsistencies and hope that the
16 whole issue will go away.

17 At this point, we don't think that that is
18 appropriate. We think it is appropriate, an appropriate
19 inquiry can be made, but before that can happen, all of the
20 factual information needs to be collected.

21 Prior to our even having the conference with Your
22 Honor on the 30th, we had sent a letter to the Howrey firm,
23 saying, this is what we want. So they knew that we were
24 looking for not only the communications with Dr. Thomas, but
25 the internal communications on an in camera basis if the

1 privilege was not going to be waived, so that the Court could
2 make this determination, because ultimately, that may be the
3 critical issue, the determination of what is in the order and
4 our interpretation.

5 THE COURT: Counsel, let me just ask. The
6 determination being whether the documents at issue are
7 privileged or not.

8 MR. BROTHERS: I am sorry. The determination
9 would be twofold. First, whether the documents would be
10 privileged. But second, if the documents reflect that in
11 fact Howrey had received confidential information from Dr.
12 Thomas, as we believe is likely, based on their continued
13 pursuit of his deposition, so that they can get his opinions,
14 then an appropriate determination should be made.

15 It is important to note that Howrey recognized at
16 the outset that Dr. Thomas was consulting for counsel for
17 Ricoh --

18 THE COURT: Let me interrupt again. So that
19 appropriate determination being whether the Howrey firm
20 should be disqualified or not. Is that what you mean?

21 MR. BROTHERS: That is a decision that we may
22 well ask the Court to make. We are not asking it at this
23 time. We don't know what those documents may show. And we
24 may not ever see those actual documents. But we think that
25 it may be appropriate for the Court to see what is in there

1 so it can make an appropriate determination.

2 We want to be very careful. We are not at this
3 point saying the Howrey firm must be disqualified, because we
4 don't have all the facts from the Howrey side. We have it
5 from Dr. Thomas' side. But we don't have all of the
6 information.

7 THE COURT: Now, let me ask this: Do I
8 understand correctly that Dr. Thomas is more or less out of
9 this litigation at this point?

10 MR. BROTHERS: Counsel for defendants have
11 verbally informed us that they do not intend to retain him as
12 an expert. However, they have said that they intend to go
13 forward and take his deposition, which will include, they
14 say, the opinions that he developed as a result of his
15 consulting for Ricoh.

16 MR. DiGIOVANNI: Your Honor, that is not
17 accurate, with all due deference to Mr. Brothers. We never
18 said we were going to inquire as to any opinion in a
19 third-party deposition of Dr. Thomas, of any opinions he
20 formed while working with Ricoh, which he did for 12 or 14
21 hours. We never said that.

22 We will take his deposition, as we would any
23 other third party. His assignment was very important at the
24 time this invention was being developed. There is no way
25 that Ricoh can lock him up, in other words, put a cage around

1 him so we can't even get to him in this litigation. He is
2 still a fact witness. Ricoh may have talked to 15 or 20
3 witnesses and hired them for 12 hours. That doesn't mean
4 they can lock them up and prevent them from being part of
5 this litigation. We are entitled to take his deposition as a
6 third party. We will not inquire into conversations between
7 Dr. Thomas and Ricoh. We will not do that. We know we
8 can't, and we wouldn't, anyway.

9 THE COURT: Mr. Brothers, what do you say to
10 that?

11 MR. BROTHERS: Well, there are three things in
12 response, Your Honor. First, on the 28th of July, the Howrey
13 firm sent Dr. Thomas an e-mail, saying if the Court rules
14 that we can't use you as a consulting expert, we are going to
15 take your deposition on the things that we have been talking
16 about. And Dr. Thomas testified, when I asked him about
17 that, he said, that looks just like the things that I was
18 consulting with Ricoh about. And it does. And in the
19 communications that we have had with counsel for the
20 defendant, they have said we are precluded from asking Dr.
21 Thomas about those issues.

22 It seems to be a bit of a moving target, based on
23 what Mr. DiGiovanni is telling me today. But the fact is
24 that Dr. Thomas had in-depth consultations with counsel for
25 Ricoh, and he testified he formed opinions as a result of

1 that. That opinion evidence, because they are going to ask
2 him to compare the patent to the prior art, that's
3 information that is all flowing directly from his consulting
4 work. As a result of the conduct of counsel for defendants,
5 Dr. Thomas has become a tainted witness. And it will be very
6 difficult to sort out what is tainted and what is not
7 tainted.

8 MS. CORBIN: Your Honor, I am the lead counsel in
9 this case for defendants.

10 If I could clarify the situation. The concern we
11 have about what we see as the problem with the order, the
12 language that Mr. DiGiovanni culled out, which was disclosure
13 of all communications with, and it's particularly the "or
14 relating to Dr. Thomas" part which gets to Howrey's internal
15 work product and communications with its client, because the
16 fact remains that Dr. Thomas developed one of the major and
17 key pieces of what we believe is invalidating prior art to
18 this patent, that was the genesis in the first place of
19 serving him with a third-party subpoena, to get the testimony
20 necessary to identify all the aspects of that particular
21 prior art and the timing of its development and so on.

22 Going back to the order, this is our concern.
23 The "or relating to" aspect would require us to provide in
24 camera for the Court, which if the Court really wants to see
25 it, we would do that, but it would require us to gather up

1 all the information and internal documentation we have about
2 that particular prior art and the fact that, as we learned,
3 Dr. Thomas was probably the most relevant witness who
4 developed that prior art, and would be the most relevant
5 person from whom to get the information as to the timing and
6 the particular aspects of that technology.

7 I do believe that those underlying facts cannot
8 be -- we are still entitled to discover those. The fact that
9 they hired him for 12 hours of consulting work can't shield
10 what is a major piece of prior art and take that prior art
11 essentially out of the case.

12 THE COURT: I agree with that.

13 MR. HOFFMAN: Your Honor, I am lead counsel for
14 Ricoh. If I could respond, since Ms. Corbin has?

15 THE COURT: Go ahead.

16 MR. HOFFMAN: I would appreciate the Court's
17 indulgence.

18 First of all, on the issue of what the scope is
19 and the timing, that is easily dealt with just by saying that
20 it is a document, internal communications regarding the
21 retention of Dr. Thomas and also putting on a date that
22 starts with the first contact with Dr. Thomas.

23 Let me go to the more significant issue here.

24 Howrey & Simon and the defendants here knew from
25 day one, once they contacted Dr. Thomas, that he was already

1 consulting for Ricoh. There is an e-mail where they said to
2 Dr. Thomas, there appears to be a conflict and consequently
3 we cannot use you.

4 Subsequently, they decided to change their mind
5 and send him a consulting agreement, encourage him to break
6 his agreement, terminate his agreement with Ricoh, and to
7 send him a consulting agreement, which he signed. After he
8 signed it, and after we complained, they went back and asked
9 him about the confidential information and whether or not he
10 got confidential information from Ricoh.

11 We didn't create this problem. Howrey & Simon
12 had a simple thing that they could have done if they chose
13 to. That is, once he indicated, Dr. Thomas said, hey, I am
14 consulting for Ricoh: Thank you very much, nice talking to
15 you, have a good day, goodbye. They chose not to.

16 They chose to go forward with this. And they
17 chose to do it until we found out about the subpoena, which
18 was only after they engaged him, not beforehand, contrary to
19 what they led him to believe, and only after they engaged him
20 already did we complain and did they finally do the checking.

21 They created the problem. We didn't create
22 this. What we are trying to do is to seek the information
23 and to place the information before the Court so that
24 appropriate relief, whatever that may be, can be fashioned.
25 As Mr. Brothers indicated, we are not seeking

1 disqualification today. I don't know that we will ever seek
2 disqualification. There may be and I hope there would be
3 other relief less than that that would be appropriate here.

4 But the first thing we need to do is to find out
5 how deep the poison runs. There is clearly a problem, one of
6 their creation. We are just trying to sort it out so that we
7 can seek from the Court appropriate relief.

8 These documents that we are indicating that they
9 should list on a privilege log and send to the Court are not
10 coming to us at this point. These are not documents we are
11 saying at this point -- eventually, we may get there, once we
12 see what is on the log.

13 THE COURT: Let me ask this, Mr. Hoffman: The
14 communications relating to, is it your position that those
15 communications may reveal, I think the words tainted witness
16 were used before, that is, they may impact in some way upon
17 this potential witness' credibility as that credibility or
18 his testimony pertains to the merits of the case?

19 MR. HOFFMAN: It may relate to that. It may
20 relate to the issue of what is the appropriate relief. It
21 may relate to the issue of the fruits of the poisonous tree,
22 as the cliché goes. There is an overall issue as to what
23 should be the appropriate relief that is fashioned here.

24 THE COURT: Right now, I don't have a motion
25 before me asking for relief in that regard. I think what you

1 are suggesting is how -- it has been discussed earlier
2 whether the Howrey firm should be disqualified or not.
3 Should that be my principal concern at this point? I think
4 it was Mr. Brothers who may have used the words tainted
5 witness. I think you are entitled to challenge this witness'
6 credibility before the finder of fact, as that credibility
7 pertains to his opinions regarding the merits of whatever it
8 is he is going to be testifying regarding the actual
9 substance of this litigation. Isn't the retention or the
10 disqualification of the Howrey firm, at least at this
11 juncture, an ancillary issue?

12 MR. HOFFMAN: It is an ancillary issue at this
13 point. But part of the other issues, Your Honor, in trying
14 to fashion relief, is, there is other forms of potential
15 relief. And we haven't sorted out what we are going to ask
16 for yet ourselves. But, for example, we may ask the Court to
17 say, listen, Howrey & Simon knew that this witness had
18 confidential information. They shouldn't be allowed to do
19 through the back door -- obtain his opinions that he formed
20 as a result of consulting with us. He should just be
21 someone, because of the problem that they created, should
22 just be off everyone's list, period. There is other
23 witnesses familiar with the prior art. He is not the only
24 one.

25 That is number one. It may be that there is

1 other sanctions. It may be that the individuals who got
2 certain information on Howrey & Simon should not be involved
3 in the case, there should be a Chinese Wall around them.
4 That is another possibility. It does not disqualify the
5 firm. There may be a possibility that the whole firm should
6 be disqualified.

7 Right now, all we are looking for at this time is
8 a list of those communications on a privilege log.

9 MS. CORBIN: Your Honor --

10 THE COURT: Don't interrupt, counsel, please.

11 MS. CORBIN: I am sorry.

12 MR. HOFFMAN: Most people quite often provide a
13 list of privileged documents, anyway. Normally, once the
14 litigation starts, you don't continue. But this is a special
15 situation. And we are asking that the Court -- the way we
16 believe the order read, we ask that the Court require the
17 Howrey & Simon firm and defendants to provide a list of the
18 privileged documents. We also ask that the limited number of
19 documents -- I can't imagine there is many in this
20 category -- be provided to the Court, so that when the Court
21 has the issues laid before it, we can ask for what relief we
22 think is appropriate and the Court can fashion relief that it
23 believes is appropriate.

24 THE COURT: Ms. Corbin, what is the extent of the
25 potential production at issue here?

1 MS. CORBIN: I wouldn't be able to address that.

2 I wouldn't have personal knowledge at this point.

3 THE COURT: Is there someone who can give the

4 Court that information?

5 MR. KELLEY: I can give you an estimate. I think

6 there is a handful of e-mails.

7 THE COURT: Let's produce them for the Court.

8 MS. CORBIN: Your Honor, my point is -- I don't

9 know whether it is apparent to the Court or not -- we seem to
10 be somewhat making points to cross-purposes here.

11 We did produce all of the exchange of e-mail and
12 any written documentation of an exchange between Howrey and
13 Dr. Thomas to the other side. And as well, Dr. Thomas'
14 deposition was taken. The testimony and those documents show
15 that no confidential information, if Dr. Thomas has any, was
16 ever communicated to Howrey & Simon. And I just want to make
17 clear, because I haven't heard, and I don't believe it's
18 Ricoh's position, that the contrary facts are the case. If
19 so, they haven't stated that.

20 THE COURT: I think they have stated that. Maybe
21 I misunderstood.

22 MS. CORBIN: That is why I wanted to clarify.

23 THE COURT: Let's clarify that.

24 MS. CORBIN: I think what they are complaining
25 about is that he had confidential information and we knew at

1 some point, he had mentioned to us that he had consulted for
2 this short time with them and we proceeded anyway.

3 THE COURT: Let's get clarification on that. Mr.
4 Brothers.

5 MR. BROTHERS: Yes. Your Honor, we believe,
6 based on the inconsistencies between what Mr. Kelley said
7 during the hearing and Mr. Thomas' testimony, as well as the
8 intent of defendants to continue to pursue Dr. Thomas'
9 testimony, leads us to believe that something more than
10 innocent communications occurred. We don't know what those
11 are and we don't know the extent to them. We know that there
12 was at least one phone call in which the questions were
13 asked.

14 THE COURT: So in other words, Mr. Brothers, it
15 is at least your position that it may have been the case
16 that -- and I don't want to put words in your mouth, but for
17 purposes of clarifying the record and answering Ms. Corbin's
18 question -- is it your assertion that there is the
19 possibility that they may have known of the confidential
20 relationship and proceeded anyway?

21 MR. BROTHERS: Well, certainly, as I understand
22 it, everybody agrees they knew of the confidential
23 relationship. They elected to proceed anyway.

24 THE COURT: And that in fact confidential
25 information had been received by Dr. Thomas?

1 MR. BROTHERS: Dr. Thomas has testified that in
2 fact confidential information was received.

3 MS. CORBIN: Was received, not transmitted to
4 Howrey Simon.

5 THE COURT: I am sorry. I should have gone that
6 additional step.

7 Is it your position, Mr. Brothers, that it was
8 transmitted?

9 MR. BROTHERS: We believe that there is an
10 inference that supports that. But we don't have the internal
11 Howrey documents that would presumably reflect on that, and
12 Dr. Thomas said he could not recall with specificity the
13 contents of his telephone conversation.

14 THE COURT: I thought, Ms. Corbin, I understood
15 counsel to take the position they have just articulated.

16 MS. CORBIN: My confusion is, Your Honor, they
17 have now taken a deposition and they have all the documents.
18 And they still say they have this inference. But they don't
19 have any statements that he made or any evidence from the
20 document exchange that any confidential information was
21 actually transmitted.

22 THE COURT: What is the basis for drawing the
23 inference, Mr. Brothers? That is what is being questioned
24 here.

25 MR. BROTHERS: There are three specific pieces of

1 evidence, Your Honor. First is the fact that the questions
2 were asked during the telephone conversation what
3 confidential information was there, and there was the inquiry
4 following our complaint, and then there was a followup e-mail
5 to that saying -- and I read it as kind of a self-serving or
6 "let's protect ourselves" e-mail -- saying, we talked about
7 this in the phone call and I want you just to give me a
8 general list of the documents that were talked about.

9 Dr. Thomas didn't testify specifically, he
10 couldn't remember the specifics of the phone conversation.
11 But based on their, Howrey's continued pursuit of Dr. Thomas
12 and the e-mail following this exchange, saying we want to
13 take your deposition on in essence the same things that you
14 consulted with for counsel for plaintiff, that leads us to
15 believe that there is going to be favorable testimony coming
16 out of that. And what is the basis for that? We think that
17 there is only one answer to that. They have got some idea
18 from Dr. Thomas as a result of his consulting with Ricoh
19 about what those opinions were going to be. And that is the
20 confidential information.

21 In any event, Your Honor has ordered the Howrey
22 firm to produce those handful of internal documents. I would
23 ask that, because the order of July 31st provides that by
24 August 31st, we may file a two-page letter, I would just ask
25 that that be postponed until 10 days after the submission of

1 the privilege log and internal documents.

2 THE COURT: That is an acceptable process. We
3 will follow that recommendation.

4 Ms. Corbin and Mr. DiGiovanni, are you clear as
5 to what your responsibilities are?

6 MR. DiGIOVANNI: Your Honor, actually, I am
7 somewhat confused with regard to the scope of production.
8 The only documents -- we described these few letters to
9 Ricoh -- the only documents that we have other than the
10 documents that went back and forth to Dr. Thomas, which were
11 all produced, are documents among the attorneys, the Howrey
12 Simon attorneys, there was some e-mail correspondence,
13 including myself, regarding Dr. Thomas and these issues
14 regarding Dr. Thomas. So every single e-mail communication
15 or other communication has at least as a recipient or the
16 author an attorney. So there is no doubt that all these
17 documents are privileged.

18 THE COURT: Sure.

19 MR. DiGIOVANNI: It sounds like they are trying
20 to break the privilege. However, there is no such exception
21 to the privilege that would allow this to break. For
22 example, in an instance where you have the crime/fraud
23 exception, the U.S. Supreme Court and the Third Circuit have
24 said there has to be at least a prima facie case established
25 before that can even be broken. There has to be a reasonable

1 basis to even inquire into these privileged documents for
2 even in camera review.

3 It is our position Ricoh has not even come close
4 to establishing that, especially because we have taken the
5 deposition of Dr. Thomas and he said, quote, I didn't share
6 any information with him -- the one attorney he talked to --
7 about confidential material. So we are somewhat confused as
8 to what the possible inquiry can be, because this is
9 privileged information.

10 THE COURT: I understand what it is. I know the
11 crime/fraud exception, counsel.

12 Mr. Brothers, do you have a position on the
13 crime/fraud exception? Do you want to say something about
14 that?

15 MR. HOFFMAN: Your Honor, if I can just briefly
16 respond. First of all, to return to one of the points in
17 history because it lays the foundation for this. There was a
18 representation to the Court that Dr. Thomas had told the
19 Howrey people that he received no confidential information
20 from Ricoh.

21 THE COURT: I remember that.

22 MR. HOFFMAN: In fact, the Court made a comment
23 about relying on Dr. Thomas' legal opinion when that was
24 indicated. Dr. Thomas, during his deposition, though,
25 testified that he did receive confidential information from

1 Ricoh, obviously, inconsistent with the representations.
2 There is a number of representations that have been made to
3 the Court that are inconsistent -- I am sorry,
4 representations to the Court that are inconsistent with the
5 documents we have obtained to date and also Dr. Thomas'
6 testimony.

7 Your Honor, I think that the whole issue of
8 making certain representations to the Court that they know
9 are inconsistent and these documents that we are asking be
10 turned over to the Court may further our belief, support our
11 belief, does create an issue of potential fraud upon the
12 Court.

13 THE COURT: I think it does. The Court is going
14 to order the production of the July 30 transcript for its
15 inspection at the same time that it reviews the documents
16 that I have just ordered be produced.

17 MR. KELLEY: I want to raise one point.

18 THE COURT: We are done with this point.

19 MS. CORBIN: So I can understand the scope...

20 THE COURT: Let's make sure we understand the
21 scope.

22 MS. CORBIN: You would like every internal
23 document in Howrey that makes reference to Dr. Thomas.

24 THE COURT: Yes. As I understand it, we are
25 talking about a handful of documents.

1 UNIDENTIFIED SPEAKER: Your Honor, is there a
2 time cutoff for this?

3 THE COURT: Ms. Corbin, is that correct?

4 MS. CORBIN: I can't make any personal
5 representation to that. There may be documents that address
6 that particular piece of prior art.

7 THE COURT: I think it was Mr. Kelley who
8 indicated it would be a relatively few number of documents.
9 Is that correct, Mr. Kelley?

10 MR. KELLEY: Yes, Your Honor.

11 MR. DiGIOVANNI: Your Honor, I am not sure about
12 the time cutoff, because I believe Mr. Hoffman had stated he
13 was interested in the internal documents regarding the
14 retention of Dr. Thomas.

15 MR. HOFFMAN: Your Honor, if I can just respond,
16 I can simplify things by proposing a time cutoff. I believe
17 the subpoena was sent out to Dr. Thomas early July --

18 UNIDENTIFIED SPEAKER: Late June.

19 MR. HOFFMAN: -- late June, from whatever that
20 date of that subpoena is going forward, coming to the
21 present.

22 THE COURT: Is that understood on the other
23 side?

24 MS. CORBIN: Yes, thank you, Your Honor.

25 MR. DiGIOVANNI: Your Honor, if we are talking

1 about documents relating to Dr. Thomas through today, this
2 would include the e-mails leading up to this teleconference
3 regarding strategy.

4 MR. HOFFMAN: I apologize, Your Honor.

5 THE COURT: We don't need that. Through the date
6 of the July 30th telephone conference with the Court.

7 Are we now clear on time parameters?

8 UNIDENTIFIED SPEAKER: It would be June 26th,
9 2003, to July 30th, 2003.

10 THE COURT: Ms. Corbin, do you understand the
11 time, and Mr. DiGiovanni, do you understand the time
12 parameters?

13 MS. CORBIN: It would capture our communications
14 with each other in preparation for that call.

15 THE COURT: Well, I don't want that, either.
16 That is not the intent of the Court, to include that,
17 either. Let's be a little more specific. Mr. Hoffman.

18 MR. HOFFMAN: Your Honor, it would be with
19 respect to the issue whether or not to retain Dr. Thomas,
20 what Dr. Thomas discussed with them, what was communicated --
21 in other words, internal discussions about what were the
22 communications with Dr. Thomas, whether or not they should or
23 should not retain him. If it will simplify things, Your
24 Honor, nor that we not capture their internal communications
25 regarding preparing for the telephone conference with the

1 Court, why don't we drop it back a few days prior -- Your
2 Honor, we are not looking for things relating to the strategy
3 in preparing for the telephone conference.

4 MR. BROTHERS: I was trying to make clear that
5 the phone conference was on July 30th and recapping that
6 phone conference, then there were additional e-mails to and
7 from Dr. Thomas up through the date of the hearing. So,
8 obviously, to the extent that an e-mail was sent to or
9 received from Dr. Thomas and forwarded to others with the
10 comments about substance and Dr. Thomas' retention and about
11 what was said, then I think all of those are appropriate to
12 include.

13 THE COURT: I agree.

14 MS. CORBIN: So, Your Honor, are you saying
15 through the date of the deposition? I missed what whoever
16 was speaking last just mentioned.

17 MR. BROTHERS: I believe the subpoena was issued
18 on June 25th or 26th. And the hearing was on July 30th, in
19 which the Court said no further communications with Dr.
20 Thomas. So it would be that 34-day period.

21 MS. CORBIN: Excluding any internal
22 communications from Howrey in preparation for that conference
23 call with the Court.

24 THE COURT: Correct.

25 MS. CORBIN: I have that in mind now, Your

1 Honor. Thank you.

2 THE COURT: Okay. Great.

3 MR. HOFFMAN: Your Honor, I presume you want to
4 proceed in order?

5 THE COURT: Yes, sir.

6 MR. HOFFMAN: Yes, sir. The second topic is a
7 request of Ricoh. We served the subpoena that was issued out
8 of Delaware, out of this Court, on Synopsys. Synopsys is not
9 a party to the litigation. However, Ms. Corbin has
10 previously indicated to the Court back at the time of the
11 scheduling conference that their position is Synopsys is a
12 real party in interest here.

13 We served the subpoena for documents. Synopsys
14 has objected to every part of that subpoena, to all the
15 categories. To date, they have produced as far as anything
16 other than some prior art, they have produced approximately I
17 think it's less than 100 pages of documents.

18 What we are trying to discover in general from
19 Synopsys is information about the software, the systems that
20 they have provided to the defendants. As the Court may
21 recall, and it's also set forth in defendants' motion to
22 dismiss, part of the issue here regarding the defendants'
23 activities relating to their utilization of Design Compiler.
24 There is also another program called Behavioral Compiler,
25 which may also play a part here.

1 What we indicate, in fact, they have asked us for
2 our basics, some of our infringement positions, and we have
3 set forth a basic explanation of why we think they infringe.
4 It is very general at this point, granted. But it does in
5 that indicate that part of it involves the use of Design
6 Compiler. Synopsys has indicated that they are willing to
7 give us some non-confidential, publicly available documents
8 on Design Compiler and Behavioral Compiler, but nothing
9 confidential.

10 We have obviously pushed for more. We want the
11 confidential documents on both products. And also we want to
12 know what other products did they provide to the defendants,
13 because there are other products that may come into play
14 here.

15 Synopsys has raised a number of objections. The
16 first objection that they have raised is that the documents
17 should not have to be produced twice, because that would be
18 duplication, and consequently, they will produce them in the
19 California action and not here.

20 And I start with that one, Your Honor, because in
21 essence during the scheduling conference, Ms. Corbin sought a
22 stay of discovery in this action. And the Court
23 appropriately indicated that, no, discovery was going to go
24 forward. What Synopsys is doing here and the defendants are
25 doing here in essence is saying that, no, discovery is not

1 going to go forward. We are only going to produce the
2 documents in California.

3 We agree, they don't have to be produced twice.
4 But there is no reason not to produce them here.

5 They have also objected on the basis that the
6 documents are confidential. Well, Your Honor, there is a
7 protective order. Howrey & Simon, who represents both
8 Synopsys and the defendants, was involved in negotiating that
9 protective order. They were involved in working out the
10 details of it. Clearly, they can be produced underneath the
11 protective order.

12 Next, Your Honor, something I had not mentioned,
13 Synopsys has not objected on any type of basis that there is
14 no jurisdiction of this Court over this issue, over the
15 subpoena. So it is appropriately here, the subpoena.

16 The only issue is what subject matter, what
17 documents do they need to produce. They have also complained
18 or objected that we haven't explained our patent infringement
19 theory. This also comes up with the objections that have
20 been raised. Mr. Meilman will get into that later on when we
21 address that topic.

22 We have indicated to them, in fact, they have
23 stated that the issue of infringement relates to the
24 utilization of Design Compiler. We are fully aware of that.
25 So for them to tell the Court, we don't -- to object on the

1 basis we don't understand what you are charging with
2 infringement at the same time they are telling the Court
3 that, oh, what's being charged with infringement is
4 utilization of Design Compiler is simply disingenuous.

5 They have also objected, indicated that the
6 documents can be obtained from the defendants and we would be
7 better off obtaining it directly from the defendants since
8 they are parties to the litigation.

9 Well, first of all, Your Honor, not all the
10 documents can be. But more importantly here, the defendants,
11 in turn, turn around and say, through the same attorneys,
12 Your Honor, saying that, well, we can't provide you the
13 documents because it's the confidential information of
14 Synopsys. Well, Your Honor, obviously, the information can
15 be provided. It can be provided underneath the protective
16 order.

17 We next have an objection that the documents,
18 some of the documents are in the public record and can be
19 obtainable from other sources. Well, to say, well, some of
20 the documents I have are publicly available and you can
21 obtain them, well, who knows what documents they are? If
22 they gave us a list, here is the dates of the documents, here
23 is where you can obtain them, fine. But if they have the
24 documents, whether they are publicly available from other
25 sources or not, they should still be obligated to provide

1 them.

2 They also object that apparently some of the
3 documents are confidential information of third parties,
4 unidentified third parties. We have asked them to identify
5 them, these allegedly third parties. They have refused to do
6 that.

7 In essence, what we are getting, what appears to
8 us, Your Honor, is a stonewalling of discovery, a decision to
9 say that basically we are just not going to provide discovery
10 until the Court requires us to. That's the way it looks. Or
11 until the case the case is in California, we are not going to
12 give you discovery. We are not going to provide it in the
13 Delaware action.

14 THE COURT: Okay. Who is going to handle this?

15 MR. KELLEY: Your Honor, I am.

16 Mr. Hoffman just recited several issues that
17 relate to objections that were recorded in our responses to
18 the interrogatories. But it doesn't address the real issue
19 here, which is the breadth -- I said interrogatories, I meant
20 document requests -- which is the breadth of the document
21 requests. If you look at these -- am I talking over
22 someone?

23 THE COURT: No.

24 MR. KELLEY: They have asked for -- I will go to
25 some specific language in a minute. They have asked for

1 every engineering document relating to any product produced
2 by Synopsys. Now, Synopsys is a third party, may be required
3 to produce some documents in this litigation. But the basis
4 for that production has to be that there is a need to get
5 this information from the third party and that the evidence
6 is directly related to a real critical issue in the case that
7 can't be attained from some other source.

8 It's not proper for them to submit document
9 requests that ask us for every engineering document relating
10 to every product that Synopsys has produced. That is the
11 real issue here. Not about the nature of our objections,
12 about whether a document is confidential or not. If they are
13 willing to focus their document requests on the real critical
14 issues, the key part of the Synopsys product that they think
15 is relevant to their theory of infringement, which, as Mr.
16 Hoffman just admitted, they haven't really spelled out in any
17 kind of detail, then that would be a legitimate basis for a
18 document request.

19 Let's cut to some of the text from the document
20 requests.

21 The order that we would ask the Court to issue is
22 a protective order relating to Document Requests 2 through
23 5. Let me just tell you, read to you a little bit, and I
24 won't do this for all of them, because it will become
25 tedious, but let me just read to you from No. 5. It says,

1 Produce all documents concerning all hardware, software
2 libraries, core databases for use in ASIC design systems, and
3 then goes on and on, about including technical reference
4 manuals, technical bulletins, user manuals, installation
5 manuals, training manuals, sourcecodes, tutorials, et cetera,
6 et cetera.

7 The real issue here is that these are just not
8 crafted as the kind of discovery that one might reasonably
9 expect one could get from a third party to a case. They are
10 not limited in any manner to the products at issue. They are
11 not limited in any manner to the key parts of the products
12 that they are going to contend infringe.

13 The only thing that they have identified in their
14 interrogatory answers to date as being the basis of their
15 infringement allegations is two steps, two steps that are
16 performed by the defendants in this case. The first is,
17 providing input to Design Compiler, and the second is using
18 Design Compiler to take the library cells and create some
19 output that will be used to produce an output for (inaudible)
20 ASIC a chip. That is all they have identified.

21 If they are willing to restrict their document
22 requests to specific things relating to those steps and
23 relating to the product that they say defendants are using in
24 an infringing manner, then we would have a basis to produce
25 documents. They aren't entitled to a fishing expedition of

1 every engineering documents in Synopsys' possession.

2 And I would go on to state, Your Honor, there are
3 a number of documents, document requests, that we have
4 produced documents, agreed to produce documents in response
5 to. This is not an exercise in stonewalling. And we have
6 given them some manuals that describe how, what kind of
7 inputs Design Compiler can accept, and describe exactly the
8 steps involved or the state, describe that Design Compiler is
9 used to select library cells in order to produce an output
10 for ASIC design.

11 THE COURT: You have described, counsel, some
12 parameters. Let's see if they are acceptable to counsel for
13 Ricoh.

14 MR. HOFFMAN: Your Honor, first of all, the
15 documents that they have produced is less than 100 pages.

16 THE COURT: I don't want to go over that. What I
17 am interested in knowing is how you react to the objection
18 which Mr. Kelley says is really at essence here, that is the
19 scope, that your request is overly broad.

20 MR. HOFFMAN: Your Honor, what we have indicated
21 to them is that -- and then I would like to go to what is
22 actually the Request No. 5, because it was not properly read.

23 THE COURT: I don't want to do that. What I want
24 to get to is an agreement. I am really not interested in
25 batting this ping-pong ball back and forth across this

1 table. I want to get to an agreement rather quickly.

2 MR. HOFFMAN: Yes. Your Honor, what we have
3 indicated is we will agree to limit our request to No. 1,
4 Design Compiler documents, Behavioral Compiler documents.
5 And they have agreed -- that is just the starting point, and
6 I will go on from there. But they have agreed to produce
7 documents relating to those products, but only the
8 non-confidential documents.

9 THE COURT: Well, let's talk about that then.
10 Insofar as, Mr. Kelley, counsel has now defined what I hope
11 you will agree is a proper scope, what about the production
12 of confidential information pursuant to the terms of your
13 protective order?

14 MR. KELLEY: Is that a question for me, Your
15 Honor?

16 THE COURT: Yes, sir.

17 MR. KELLEY: The reason that we mentioned
18 confidentiality in the objection is that as a third party
19 confidentiality is one of the considerations that is
20 mentioned in the case law about weighing that burden on the
21 third party versus the need in the case.

22 THE COURT: We are trying to reduce the burden.
23 I do understand your complaint regarding the burden.

24 MR. KELLEY: I apologize. The next point, what
25 they have identified as being the basis of infringement,

1 namely, that the user provide certain inputs to Design
2 Compiler and that that Design Compiler takes those inputs and
3 selects library cells to produce the output, that they can
4 get from public documentation. There really is no need to go
5 into our sourcecode describing exactly in great detail how
6 those functions are performed or into the internal
7 engineering documents describing every aspect of that. If
8 that is what they need from us, they have already got that.
9 And I will correct Mr. Hoffman. We have already produced
10 several hundred pages of manuals.

11 THE COURT: Let's just deal with this discrete
12 issue, this discrete range of documents, Mr. Hoffman. Do you
13 agree that there are alternate sources?

14 MR. HOFFMAN: No, there are not, Your Honor. The
15 information is going to be in the confidential documents. It
16 is going to be in the sourcecode. It is going to be in the
17 other information that comes out of Synopsys or comes out of
18 the defendants.

19 There is many other parts of this claim, such as
20 discussions of expert systems, discussions or rules. Some of
21 those are going to be parts of the (inaudible) of Design
22 Compiler or Behavioral Compiler.

23 So consequently, just inputting information, yes,
24 that is part of the process here, there is no question that
25 is part of the process. But then it's how the system

1 operates is another part of the process, and some of that is
2 not fully available. The details that we want for trial to
3 prove our case, obviously, we have enough information to
4 bring the case and to allege, quite appropriately allege,
5 that that information and that operation is present. But we
6 are entitled to further information to further establish and
7 prove our case.

8 Synopsis, they keep on saying they are a third
9 party. Yet at other times they keep on saying they are the
10 real party in interest and they are the true party here.

11 THE COURT: I don't hear any objection to the
12 relevance, that it's not discoverable. It's a question of
13 sourcing, where you can get it from, whether you can get it
14 from alternate sources and how to protect it.

15 MR. HOFFMAN: There is a protective order and we
16 cannot get this from --

17 THE COURT: What I am getting at is, it seems to
18 me, counsel, if you remove for a moment -- and I know this is
19 difficult to do -- your adversarial hats and think more in
20 the spirit of cooperation, because there is no apparent
21 disagreement as to the relevance of this information, the
22 discoverability of this information, then you could probably
23 come to a point of agreement as to how it should be
24 produced. Is that just beyond your capability? Or what are
25 we talking about here?

1 MS. CORBIN: Your Honor, I think that now they
2 have the identified Design Compiler, Behavioral Compiler --
3 Design Compiler alone, just for point of reference for the
4 Court, is the largest product at Synopsys, accounts for more
5 than 20 percent of its revenue. They still want all
6 engineering documents relating to Design Compiler. We still
7 have a huge problem with respect to overbreadth.

8 THE COURT: I can understand why you would have a
9 problem with that. And it seems to me the plaintiff should
10 be able to narrow that request somewhat.

11 MR. HOFFMAN: Your Honor, if Synopsys is willing
12 to give us the confidential information, they are willing to
13 give us the sourcecode limited to the time of the scope of
14 documents, going back to 1996, so we are not talking about
15 everything that is there, all documents that they have ever
16 had, we are willing to work with them in trying to work out
17 some other limitations. But to say, well, tell us the
18 details of exactly which parts of Design Compiler you are
19 alleging to infringe and give us a detailed claim chart so
20 that then we can decide whether or not we will give you
21 anything is putting the cart before the horse. What they are
22 asking is prove your case and then we will decide if we will
23 give you discovery.

24 THE COURT: Obviously, you don't have to do that.

25 MS. CORBIN: Your Honor, the sourcecode, since it

1 has been mentioned twice now, is of particular import, I
2 think, because that is the most sensitive information about a
3 particular product, it contains a lot of information. If
4 what they need is an understanding of the inputs that these
5 particular customers input to Design Compiler when they use
6 it, there are other ways to get to that information besides
7 having the sourcecode, which is the most sensitive
8 information in the company, regarding their key product.

9 THE COURT: Well, inevitably, counsel, in all of
10 these cases, and you know that from your vast experience in
11 this area, there is always information, oftentimes
12 extraordinarily sensitive information like this that is at
13 issue and that needs to be shared in order for the litigation
14 to proceed forward. That is why we have protective orders.
15 That is why there is a body of law that has grown up around
16 this issue. But it is incumbent upon counsel to recognize
17 the need to cooperate, and if necessary, to craft new
18 language that will enable this type of information to be
19 shared at appropriate levels. If it is for attorneys' eyes
20 only -- I think you understand where I am going with this.

21 If there is truly an alternate source that will
22 enable the plaintiff to prosecute its claims in a timely
23 fashion from which it can receive this information, I would
24 be interested in knowing and having the discussion right now
25 as to what that source is and whether it is acceptable to the

1 plaintiff.

2 MS. CORBIN: Can you address that, please, Chris
3 Kelley?

4 MR. KELLEY: Yes, absolutely. That is where I
5 was intending to go.

6 Your Honor, the issue here is that -- of course,
7 they have stated to this Court -- and I don't want to get
8 into the motion to stay or transfer -- but they have stated
9 that their beef is not with Synopsys. That it's by
10 defendants that are infringing. They are now suggesting that
11 Synopsys is a third party and as a party to this case has the
12 same obligations in discovery.

13 If you look at the way the interrogatory is
14 drafted, they identify the two things that would have some
15 connection with the user, namely, putting some stuff in at
16 the top of the process and getting something out at the
17 bottom. And they didn't mention anything about all the other
18 the stuff, which of course I think they are going to argue
19 are all internal to Design Compiler.

20 Their theory of infringement really is these
21 defendants use Design Compiler. If that is the case, which
22 they haven't come flat out and stated today, they should have
23 sued Synopsys. Instead, they elected to sue Synopsys'
24 customers. Now they are trying to back-door, attack
25 Synopsys' product by getting this very broad discovery.

1 I think the progression here is, to the extent
2 they really believe their case of infringement rests on
3 something the defendants are doing and there is some
4 peripheral material that is in the exclusive possession of
5 Synopsys, that is the kind of discovery they should get. But
6 what I think we are going to find out when we actually have
7 this meeting -- and I think that's the proper way to proceed,
8 is for the proper parties to get together and work out
9 exactly what they need and what we can give them, how we can
10 get them the information they need. I think what we are
11 going to find is everything they need relating exclusively to
12 stuff done by Design Compiler, nothing to what these two
13 defendants here are doing except using Design Compiler,
14 providing the regular inputs that Design Compiler normally
15 takes in and at the end of the process say thank you very
16 much for the output, I am going to take this off to go make
17 the chip.

18 THE COURT: It is not necessary for you to
19 respond, Mr. Hoffman. The Court has instructed the parties
20 to get together and discuss this matter. If you are still at
21 an impasse after that discussion, obviously, we will have to
22 revisit this.

23 Let's go on to No. 3.

24 MR. HOFFMAN: No. 3, Your Honor --

25 MR. KELLEY: Your Honor, I think this is our

1 item.

2 THE COURT: Yes.

3 MR. KELLEY: This is a relatively simple matter.

4 On the patent at issue, there are two inventors, Mr.

5 Kobayashi and Mr. Shindo. Ricoh has already agreed to make

6 Mr. Kobayashi available for deposition in Japan. That is

7 going forward.

8 At a fairly early point during discovery, we

9 asked them whether they were representing Shindo. I am not

10 going to get this exactly right. They said, no. We will see

11 if they will work with us. Give us your subpoena and we will

12 see if he will accept it, not formally, accept service, but

13 he will respond to it.

14 We haven't yet received from them a commitment,

15 any final word as to, one, whether Mr. Shindo will accept

16 this -- will cooperate in discovery, and two, whether they

17 intend to use him during trial, appear as a witness.

18 Both Mr. Shindo and Mr. Kobayashi, to our

19 knowledge, live in Japan. We have asked them if they would

20 bring Mr. Shindo to the United States. They have said, no,

21 you have to go to Japan to take his deposition if you want to

22 take his deposition. That's assuming of course that he at

23 some point determines to cooperate.

24 The problem we are facing, given the close of

25 discovery in January, the facilities for deposition, which I

1 assume everyone on the phone is familiar with, depositions in
2 Japan must takes place either at the embassy or one of the
3 consulates. The Tokyo Embassy is already completely booked.
4 There is a little opportunity, some space in the Osaka
5 Consulate, which, to our understanding, that is actually
6 where Mr. Shindo lives, is Osaka.

7 What we would like from the Court is some
8 deadline as to when they actually have to have a final word
9 as to whether Mr. Shindo is going to cooperate or not. Then
10 either to make him available in Japan in accordance -- with
11 one of the windows of opportunity that we have, at the Osaka
12 Embassy, or bring him to the United States for deposition
13 here.

14 THE COURT: Okay.

15 MR. KELLEY: We can depose him in advance of
16 trial.

17 THE COURT: Can we get an answer to the question,
18 counsel?

19 MR. HOFFMAN: Yes. Mr. Shindo, who is a third
20 party, we don't represent him, we have attempted to contact
21 him through numerous ways. He does not respond to any of our
22 requests to see if he would be willing to accept the
23 subpoena.

24 We have asked him to sit for a deposition and
25 produce documents. He does not respond. He is so far, by

1 lack of response, at least implicitly is indicating he is not
2 going to cooperate. He has been gone from Ricoh over ten
3 years now. It is our belief that he is not going to
4 cooperate. Obviously, if he is not going to cooperate, he is
5 not going to show up at trial or anything else.

6 Both plaintiff and the defendants had listed Mr.
7 Shindo as someone who might have information. He is one of
8 the inventors. I presume he has some information. But no
9 one can force him as a third party to cooperate or to appear
10 for a deposition. We have been unsuccessful in doing that.
11 Consequently, we can't produce him.

12 With Dr. Kobayashi, he lives in Japan. He is
13 also not employed by Ricoh. We asked him. He came back and
14 said, yes, he would be willing to voluntarily appear. And
15 that deposition is set up in September, late September.

16 THE COURT: Mr. Kelley, what would you have
17 counsel do in this situation?

18 MR. KELLEY: I understand the difficult situation
19 he is in. This is the first time I heard he hadn't
20 responded. What I guess I would like is a drop-dead date, if
21 you will forgive the phrase, by which we will know he is
22 either going to cooperate by this date or there is not going
23 to be an opportunity for him to appear at trial. It seems to
24 me that should be sometime before the close of discovery, not
25 the final day of discovery.

1 MR. HOFFMAN: That is fine, Your Honor. We would
2 be willing to do that by the end of the year.

3 THE COURT: The drop-dead date is the end of
4 discovery.

5 MR. KELLEY: The complicating factor is if he is
6 going to be deposed in Japan.

7 THE COURT: No. I understand. Obviously, there
8 are challenges that would have to be overcome. For instance,
9 on the last day of discovery, you get word that he is
10 available, the Court will be flexible, perhaps, in all
11 likelihood, and permit the parties an additional period of
12 time in which to complete his deposition. But we can
13 certainly deal with that at the time. At least theoretically
14 the drop-dead date is the last day of discovery.

15 MR. HOFFMAN: We have asked the defendants to
16 produce all documents -- let me read it to you, a single
17 document request in this regard: Produce all documents and
18 tangible things identified in Section B, Items 1 through 8,
19 of defendants' initial disclosure dated and served on or
20 about May 30, 2003.

21 This is where they listed the documents that they
22 are going to rely upon in support of their case. We asked
23 them to produce the documents. Part of the response is,
24 defendants further object to this request as unduly
25 burdensome in seeking discovery of information not reasonably

1 calculated to lead to the discovery of admissible evidence.
2 Defendants further object to this document request as unduly
3 burdensome and on the basis that it seeks detailed discovery
4 regarding operations of defendants that has no relevance to
5 defendants' ASIC products or methods.

6 Your Honor, these are the documents that they
7 listed, the categories of documents they listed in their
8 initial disclosure.

9 The purpose of the initial disclosure, obviously,
10 is either done over the documents, list the categories so the
11 other side can go ahead and request them. We requested
12 them. They came back and have said, no, they are not
13 relevant. We tried to work it out with them. The response
14 was, and this is from Mr. Mower (phonetic), defendants
15 identified eight categories of documents that were likely to
16 be relevant to this dispute. Defendants did not suggest, as
17 your letter implies, that any documents that go into that
18 that fell into these categories were relevant.

19 Well, Your Honor, if they listed them, you only
20 list what you think is relevant. If it is relevant, we are
21 entitled to them. If they didn't list any -- if the
22 documents they listed are not relevant, then why did they
23 list them in their initial disclosure?

24 THE COURT: I agree. What is the defendants'
25 response to this?

1 MR. KELLEY: Your Honor, the categories that are
2 identified are relatively generic phrases. Product design,
3 development materials, marketing, promotional materials.
4 Sales and accounting statements. You get the gist. Sort of
5 generic classifications of documents.

6 When we prepared this, this is in the initial
7 disclosure statement, we did not have any idea what their
8 theory of infringement was. All we had was the complaint,
9 which doesn't provide any detail other than you infringe. We
10 did note what our invalidity arguments were going to be and
11 we started collecting that information as quickly as
12 possible. In fact, we have produced the thousands of
13 documents that plaintiffs sometimes refer to in their papers
14 are all prior art articles that we have produced. So we have
15 produced the materials we knew about in describing these
16 categories at that time. We immediately started producing
17 that stuff.

18 Since then, we have agreed to go ahead and get
19 the materials relating to -- and here's where the parties
20 have had some negotiation in the past few days leading up
21 though this call, not ultimately successful but some
22 narrowing of the differences -- we have agreed to produce, to
23 go get documents relating to ASIC products which were
24 developed in a process where there was some logic synthesis.
25 Logic synthesis is the kind of operation performed by Design

1 Compiler and other product.

2 And we wanted to further restrict the documents
3 to documents that had some bearing on the use of, the steps
4 which they have identified in their interrogatory, providing
5 input to the logic synthesis to Design Compiler and using
6 Design Compiler to map library cells to produce an output
7 file.

8 They have agreed that their document requests,
9 which asks for every information, all documents about every
10 ASIC, should properly, they have agreed to narrow their
11 request, just in the last few days, to ASIC, whether there
12 was some logic synthesis, i.e., having something to do with
13 the process that is described in their patent. So then the
14 remaining difference, really, in the document requests is
15 whether they get every document that the defendants have on
16 that ASIC or if they get the documents that are relevant to
17 the claimed process.

18 THE COURT: I have to say, this is the first time
19 that I have ever had to deal with an issue involving
20 production related to initial disclosures. I find it
21 extraordinary. Counsel --

22 MS. CORBIN: Your Honor, I think that the problem
23 was that the initial disclosure was inartfully drafted.

24 THE COURT: Perhaps. But what you need --

25 MS. CORBIN: The problem may be, there was a

1 subset of documents.

2 THE COURT: Ms. Corbin, I am going to talk over
3 you. You can't talk over me. I know we are on this bridge
4 line and sometimes we talk over one another, and that's okay.

5 But you are going to have to go back and finish
6 your conversation about this, counsel. I am not going to
7 spend any more time on this.

8 Let's move on to No. 5.

9 MR. MEILMAN: Your Honor, actually, you have
10 heard part of the discussion on the document requests.
11 Actually, the interrogatory, No. 7, they are also related.

12 THE COURT: Let's talk about them both then.

13 MR. MEILMAN: Right after the Rule 16 conference
14 in May, we served these document requests and interrogatories
15 on defendants about a month later. And as Mr. Kelley
16 indicated, we have been trying to resolve our differences
17 ever since. We have gotten some information in documents.
18 But it's been dribbled in piece by piece.

19 As Mr. Kelley has told you, that they keep
20 objecting on the grounds that we haven't told them our
21 infringement theory. In essence, what they are doing is they
22 want us to give them our Markman construction before they
23 decide what they are going to give us. That's something that
24 was raised during the Rule 16 conference, and the Court
25 refused to push the Markman conference before any discovery.

1 As Mr. Kelley indicated, we have narrowed the
2 definition of what we want, well, the patent in suit is
3 directed to a computer aided design process for making
4 application specific integrated circuits, what has been
5 referred to in this conference call as an ASIC.

6 We have asked them, we have narrowed our request
7 to processes for making ASICs by a computer-aided design
8 process using logic synthesis, development of those
9 processes, what equipment they have used, and any literature
10 they have had about that.

11 Last Friday, they have told us they will provide
12 us details about their current process (inaudible)
13 development. As to two of the three defendants, they have a
14 plant in the U.S. But as Mr. Kelley indicated, they want to
15 restrict that to Design Compiler because we indicated we knew
16 they used Design Compiler in at least some of their
17 processes.

18 Yesterday, they backtracked, as far as I
19 understand it, and said we will give you only details as to
20 some of these substeps in the process.

21 They have told us that one of the defendants,
22 Matrox Tech, did design work in Florida, but we will be
23 getting no information about that because it closed its plant
24 in 2000 and those records don't seem to be located.

25 Then there is an issue on questions of responses

1 by the Matrox defendants done in Canada. We have been told
2 that there are additional process steps those defendants
3 carry out which makes the foreign production provisions of
4 Title 35 U.S.C. 271(g) inapplicable. As you may guess, the
5 minute they said that to us, we said, What are those steps?
6 And we have been refused disclosure on that.

7 Yesterday I got a call from Mr. -- I got a letter
8 from Mr. Kelley indicating that if we want, they will make
9 people available with knowledge about their design work for
10 deposition, but we are not going to get any interrogatory or
11 document request.

12 Basically, on the definition of the products --
13 the processes that we wish to have disclosure on, we believe
14 that limiting that to the computer-aided design process with
15 logic synthesis is narrow enough to give us the discovery we
16 want. We know as to some processes the defendants use Design
17 Compiler. What we don't know is whether they have any other
18 products that they have gotten from other suppliers.

19 We have asked them, do you have those? And
20 produce the documents. We have asked both in general and
21 specifically as to one of their -- one of the companies we
22 know provides equipment called Cadence. And basically, we
23 are told we are not going to get an answer. As to other
24 things, when they don't have any documents or it has not been
25 applicable, we have been told that. But as to the generally,

1 are you using somebody else's equipment, are you using
2 Cadence's equipment, we are getting no answer at all.

3 I think that's basically -- that whole approach
4 filters down to everything that is in dispute pretty much on
5 the interrogatories and document requests. As Mr. Kelley
6 said, it is a question of what we are entitled to as far as
7 breadth goes.

8 THE COURT: Okay.

9 MR. MEILMAN: It may very well be there are no
10 other alternate products that the defendants are using. But
11 I think we are entitled to know that.

12 THE COURT: Okay. Let's hear from the other
13 side.

14 MR. KELLEY: Your Honor, let me talk about the
15 271(g) issue in a minute. Let me deal with the document
16 requests first.

17 The fight that we have been having over the last,
18 it's been about three or four weeks the parties have been
19 discussing this in earnest, is these document requests. Once
20 again, let me just read this: Produce all documents -- I am
21 reading from No. 5, Document Request No. 5: Produce all
22 documents concerning the conception, design, development,
23 manufacture, or sale of each of the defendants' ASIC
24 products. Then it goes on and gives some examples sort of
25 thing.

1 There are several. The ones we have objected to
2 and said these are too broad are that kind of thing. They
3 haven't (inaudible) with all products and anything having to
4 do with the design of that product.

5 Now, Mr. Meilman just said that, he said CAD
6 process. As far as I know, that is the first time I have
7 heard them say, what we really need is stuff about the CAD
8 process. Although I am not sure whether he meant -- well,
9 the thing that is relevant here is logic synthesis. It's not
10 the specification, the engineering specification describing
11 what the product was going to do that was formulated back
12 when people were kicking around ideas about what a good
13 product for the company would be. So that's what we have
14 been fighting about now.

15 Ricoh just a few days ago said we will limit the
16 products, as I mentioned, we will limit the products to those
17 products that use logic synthesis.

18 Now, I think the remaining issue is whether the
19 scope of these document requests should be restricted to
20 documents describing the use of logic synthesis or relating
21 to logic synthesis for those products, and not anything
22 having to do with the specification of the product,
23 engineering, planning meetings, memos about how, we have got
24 bugs, our design isn't working, because none of that has
25 anything to do with the claim.

1 THE COURT: Is that an acceptable limitation,
2 Ricoh?

3 MR. HOFFMAN: Your Honor, what we are looking
4 for, as Mr. Meilman, I thought, had indicated, is the
5 documents that relate to the process for manufacturing these
6 ASICs in the designing of the ASICs using systems that have
7 logic synthesis in them. We are not looking for things
8 relating to debugging of the ASICs themselves. We are not
9 looking for things on other types of -- there is some
10 categories -- and I would have to go back to exactly what Mr.
11 Kelley said -- other things that were pre the designing of
12 these ASICs using the particular types of processes that are
13 involved in the claims and in the patent here of ASIC
14 designing processes using logic synthesis.

15 That is what we are looking for. We have told
16 them that. To date, they have produced less than a thousand
17 pages of documents.

18 THE COURT: Is that a different way of saying
19 that you are in agreement with the limitation that has just
20 been proposed? Or are you broadening?

21 MR. HOFFMAN: No. I think we are in general
22 agreement of some of the things. Mr. Kelley rattled off a
23 number of things.

24 THE COURT: So did you. So, counsel, my question
25 to you is, now having heard one another speak, and speaking

1 to one another through me, do you think that you can put a
2 finer point on these requests and resolve the objections?
3 Because the Court has now invested an hour and a half of its
4 time on matters, quite frankly, in a manner in which it quite
5 frankly believes could have been better invested.

6 Are we at a point in this discussion as to Items
7 5 and 7 where counsel can be released to your own devices and
8 work it out?

9 MR. KELLEY: I believe.

10 MR. HOFFMAN: I believe, also, Your Honor.

11 If I can just ask one question, because I think
12 it may help in advancing a number of these things that we are
13 trying to work out. We would hope that, and would like a
14 commitment from counsel for the defendants and for Synopsys
15 to work out all these matters, to work diligently over the
16 next week, between now and the end of next week to work out
17 all these matters, so we can get these documents.

18 THE COURT: So ordered, yes.

19 MR. HOFFMAN: And also that the defendants will
20 not object and tell us we can't give it to you, these
21 documents, because it is the confidential information of
22 Synopsys.

23 THE COURT: You have to work through your
24 protective order.

25 MR. HOFFMAN: We will be underneath the

1 protective order, the documents.

2 THE COURT: I think that's a given, counsel.

3 MR. HOFFMAN: Thank you, Your Honor. I
4 appreciate it.

5 THE COURT: Okay.

6 MR. MEILMAN: Your Honor, Mr. Kelley was about to
7 start raising some material on the Matrox people in Canada.
8 I don't want to get that swept under the rug.

9 MR. HOFFMAN: Your Honor, that also probably ties
10 in with Topic No. 8 that they have raised.

11 THE COURT: Topic No. 8 is a non-starter for the
12 Court. I am not going to grant permission to file a letter
13 in support of the seeking of permission to file summary
14 judgment at this time, no.

15 MR. HOFFMAN: I presume we are also entitled then
16 to get discovery out of the people in Canada.

17 THE COURT: I don't see why not.

18 MR. KELLEY: Can I address that issue briefly?

19 THE COURT: Yes.

20 MR. KELLEY: They are seeking discovery -- this
21 claim relates to the logic synthesis process. What they want
22 is the discovery of logic synthesis work done in Canada.

23 THE COURT: Counsel, you are breaking up on us.

24 MR. KELLEY: It seems to me, I know we don't want
25 to get into the issue of whether they are going to prevail on

1 their 271(g) theory. But that's unusual, to try to apply a
2 U.S. patent to seek discovery on work done outside the United
3 States, on things done outside the United States is very
4 unusual.

5 THE COURT: What is the thinking there, Ricoh?

6 MR. HOFFMAN: Your Honor, if a process of
7 manufacturing a product is carried on outside the United
8 States where that process would infringe a process patent
9 inside the United States, then there is a basis for
10 allegation of infringement, the charge of infringement, just
11 boiling it down to a summary format.

12 The Bayer case they are relying upon is talking
13 about something entirely different. It was talking about
14 strictly -- and I have part of the claim here -- a need for
15 determining whether a substance is an inhibitor or
16 activator.

17 That is not what we are talking about here. We
18 are not talking about a method of determining whether or
19 not -- determination of whether a piece of information is in
20 one category or another. We are talking about part of a
21 manufacturing process, and 271 clearly covers that situation,
22 where the products do flow into the United States, that there
23 is infringement of that process patent.

24 This is a manufacturing process. So it's our
25 position we are entitled to it.

1 THE COURT: Does counsel disagree with counsel's
2 statement regarding the current state of the law?

3 MR. KELLEY: Yes, Your Honor. The Bayer case
4 makes it absolutely clear that the manufacturing process,
5 this is the exact question addressed by the Federal Circuit,
6 the manufacturing process, in order to fall within 271(g),
7 the claimed process has to be one using manufacturing the
8 device, the actual physical things that are going to be
9 imported.

10 MR. HOFFMAN: This is all part of the
11 manufacturing process, Your Honor. And what they are trying
12 to do is say, well, since we disagree and we think that we
13 are entitled to summary judgment, we are not going to give
14 you discovery. And we are entitled to that discovery and to
15 show that it is part of the manufacturing process for
16 manufacturing the products that then flow into the United
17 States.

18 THE COURT: Mr. Kelley.

19 MR. KELLEY: Your Honor, if I may finish my
20 point. The case makes it absolutely clear that there has to
21 be a physical good produced under this process. What their
22 claim process produces is a -- a net list, that is then used
23 to produce -- it is sent off to a foundry that actually
24 produces the devices. It is not used in the process of
25 manufacturing the goods. The Federal Circuit decision makes

1 it quite clear that the process set out has to talk about the
2 actual process, the mechanical physical process of creating
3 the thing that is going to be imported.

4 THE COURT: Let's see if your opponent agrees
5 with that statement. Do you agree that the case stands for
6 that proposition, counsel?

7 MR. HOFFMAN: No, I don't, Your Honor. The case
8 stands for the proposition -- that is why I read a portion --
9 it stands for the proposition that when all that is
10 determined by the process is a piece of information that is
11 never used in the manufacturing operation, it has nothing to
12 do with manufacturing a product, it is just determining
13 information, that that is not covered by 271.

14 What we have here in this case is one or a series
15 of the steps, the initial steps in designing a product that
16 is -- as part of the manufacturing operation, design and
17 operation, the manufacturing of a product that is imported
18 into the United States. That is very different. That is not
19 what the Bayer case is dealing with.

20 THE COURT: Counsel for Matrox.

21 MR. KELLEY: If I am correct about this, then we
22 don't have to have half of the discovery in this case, and if
23 Mr. Meilman is correct, then we do. What I propose is we
24 brief this question because we are having lawyer argument.

25 THE COURT: What I am going to do first is read

1 Bayer. That might be of some assistance to this issue. Let
2 me take a look. If I feel I need further elucidation on this
3 subject, I will let you further address it in some fashion,
4 whether it be in the form of some limited briefing or further
5 discussion, I don't know exactly at this point. But we will
6 defer No. 8 while the Court takes an opportunity to read the
7 case.

8 MR. HOFFMAN: In the interim, Your Honor, if we
9 can begin to sort out discovery issues with the defendants,
10 with Matrox on this issue, so at least we can resolve the
11 scope and other issues so we can begin to get discovery from
12 them.

13 MR. KELLEY: We are in fact going forward with
14 discovery. We are in the process of collecting that
15 information about where we do our design work and the general
16 design flow stuff. I am not sure what more he wanted. He
17 wanted the same sort of discovery for Matrox that we had for
18 the other defendants.

19 MR. HOFFMAN: Yes, Your Honor.

20 MR. KELLEY: It seems to me it will take -- I
21 understand the Court has a busy schedule. But he seems to be
22 asking that we do this very discovery that I am suggesting
23 could be avoided.

24 THE COURT: I think that is correct. What I am
25 going to order is, as far as the Matrox defendants are

1 concerned, we are going to defer engaging that process, Mr.
2 Hoffman, for a brief period of time, while I take a look at
3 the case, if necessary, get the benefit of further thoughts
4 from counsel.

5 Let's deal with No. 6. Have we dealt with No.
6 6?

7 MR. MEILMAN: Your Honor, just, we use the term
8 Matrox defendants. One of the Matrox defendants was Matrox
9 Tech, which had a plant and was doing work in Florida. I
10 take it that as far as their objections as to activity in
11 Canada, Your Honor's order does not apply to Matrox Tech.

12 THE COURT: Are we in agreement with that?

13 MR. KELLEY: Yes, Your Honor. We are in the
14 process of collecting those documents for that work like we
15 are doing for every other -- the other non-Matrox defendants.

16 THE COURT: Then we are in agreement, counsel.

17 MR. MEILMAN: Thank you, Your Honor.

18 MR. HOFFMAN: Your Honor, since it may help avoid
19 a future dispute or arguments, Mr. Kelley has indicated they
20 are collecting documents. Does he have a date by which he
21 believes they will be produced?

22 THE COURT: Mr. Kelley?

23 MR. KELLEY: We are doing a rolling production.
24 We are getting stuff as quickly as we can get it. We
25 produced documents just a few days ago.

1 MR. HOFFMAN: Will we have all of them produced
2 by mid-September, Mr. Kelley?

3 MR. KELLEY: I would hope so.

4 THE COURT: No. 6, what do we have left with
5 regard to No. 6?

6 MR. KELLEY: We would like to take that off.

7 THE COURT: That is fine with the Court,
8 counsel. You don't need to explain.

9 Counsel, I will take a look at the Bayer case.
10 You will hear from me one way or the other shortly.

11 (Counsel say "thank you.")

12 THE COURT: Take care.

13 (Teleconference concluded at 12:40 p.m.)

14 - - -

15 Reporter: Kevin Maurer

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EXHIBIT 3

D I C K S T E I N S H A P I R O M O R I N & O S H I N S K Y L L P

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March 7, 2003

**BY CERTIFIED MAIL-
RETURN RECEIPT REQUESTED**

Mr. Wilson Tzang
President
Faraday Technology Corporation
490 De Guigne Drive
Sunnyvale CA 94085

**CONFIDENTIAL TREATMENT
REQUESTED**

Dear Mr. Tzang:

We are writing to you on behalf of Ricoh Company Ltd. because we are aware that your company is involved with the design of custom ICs that include application specific designed circuitry. We understand that in designing these circuits, you use a computer-aided design system obtained from Synopsys, including Design Compiler.

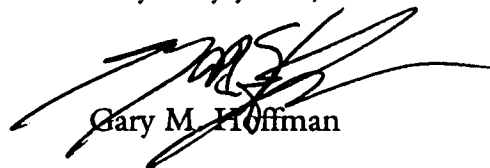
As you may know, Ricoh owns two of the basic patents directed to computer-aided design processes. These are U.S. Patent Nos. 4,922,432 and 5,197,016. They cover significant advances in computer-aided design processes for designing custom designed ICs for specific applications directly from architecture independent functional specifications for the integrated circuit. We are enclosing copies of these patents for your information.

While Ricoh is currently enforcing these patents in a lawsuit it recently filed in the U.S. District Court for the District of Delaware, Ricoh remains willing to license the patents. In fact, Ricoh has already granted non-exclusive licenses under these patents. Ricoh also would be willing to provide your company with a non-exclusive license. For your information, there are counterpart patents and applications in a number of countries outside the United States.

Because Ricoh is at an early stage in its licensing activities, at the current time, Ricoh is prepared to grant a non-exclusive license on favorable terms. However, we trust you will recognize that such favorable terms will cease to exist as time progresses.

If you are of the opinion that you do not need or want a license from Ricoh, it would be helpful if you would give us some insight into your reasons. We request your response within 60 days from the date of this letter.

Very truly yours,



Gary M. Hoffman

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